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ABSTRACT

A Senate hearing received testimony on amendments to the Buy Indian Act, which allows the federal government to give preference to Indian businesses when awarding contracts on reservations. The legislation focuses on reservation economic development, sets aside for small businesses all contracts below $1 million, addresses the prompt payment concerns of contractors, and outlines procedures for self-certification of Indian firms and for resolving disputes concerning the legitimacy of particular businesses receiving preferences. Representatives of the Bureau of Indian Affairs and the Indian Health Service discussed the extent of present agency contracts with Indian firms and problems encountered in implementing the Buy Indian Act. A speaker from the National Center for American Indian Business Development discussed: (1) the bottom ranking of American Indians in a national survey of minority owned businesses; (2) previous circumvention of the Buy Indian Act by the use of "front" companies with nominal Indian owners; (3) negative educational and economic statistics from "Indian country" and their relationship to lack of economic opportunity; (4) percentage of Indian-owned firms in 15 states; and (5) positive and negative labor-force, cultural, and environmental factors affecting business development on reservations. Representatives of tribes, Indian-owned businesses, and Indian organizations spoke in support of the legislation. (SV)

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RC

S. HRG. 102-905

BUSINESS OPPORTUNITIES ENHANCEMENT ACT (DRAFT LEGISLATION TO AMEND THE BUY INDIAN ACT)

ED360127

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

TO INCREASE EMPLOYMENT AND BUSINESS OPPORTUNITIES FOR INDIANS

JULY 2, 1992
WASHINGTON, DC

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INDIAN BUSINESS OPPORTUNITIES ENHANCEMENT ACT (DRAFT LEGISLATION TO AMEND THE BUY INDIAN ACT)

THURSDAY, JULY 2, 1992

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:38 p.m. in room 485, Russell Senate Office Building, Hon. Kent Conrad (acting chairman of the committee) presiding.

Present: Senators Conrad and Daschle.

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. This hearing will come to order before the Senate Select Committee on Indian Affairs.

Good afternoon. I'd like to welcome everyone to today's hearing.

Today the Select Committee on Indian Affairs convenes to receive testimony on the Indian Business Opportunities Enhancement Act, draft legislation to amend the Buy Indian Act.

The draft proposal is the product of negotiations between Select Committee on Indian Affairs' staff, the Bureau of Indian Affairs' representatives, House Interior Committee staff, and other interested parties.

It builds on S. 321, the Buy Indian Act Amendments of 1989, which was vetoed by the President at the end of the 101st Congress.

It is my hope that today's hearing will help pave the way for the prompt introduction and passage of this important legislation. The bill is extensive, so I will highlight only a few of its most notable provisions.

First, the bill focuses the Buy Indian Act on reservation economic development. It helps ensure that Buy Indian contract dollars will be spent in a way that not only provides opportunities for business entrepreneurs, but also provides an economic benefit to impoverished reservations.

Second, the bill sets aside for small businesses all Buy Indian contracts below $1 million. According to the BIA, one large Buy Indian contractor consistently receives nearly 50 percent of the dollar value of all BIA construction contracts, and possibly as much as 80 percent in some years. This provision will prevent a single contractor from monopolizing Buy Indian Act opportunities.

Third, the bill addresses the prompt payment concerns of Buy Indian contractors by directing contracting agencies to adhere to the requirements of the Federal Prompt Payment Act. The bill also provides for the creation of an alternative dispute resolution framework to ensure that conflicts can be resolved before contractors are brought to the edge of bankruptcy.

Fourth, the bill creates a bonding demonstration project within the BIA and, as a last resort, authorizes contracting officers to waive the Miller Act on low-dollar contracts.

Fifth, the bill creates an Office of Indian Business Utilization within the Department of the Interior as the primary Federal entity responsible for administering the act.

The office would, among other things, conduct periodic, random investigations of self-certified Buy Indian contractors, investigate complaints that Buy Indian requirements are being ignored or improperly applied, and certify joint venture arrangements.

Finally, in an effort to compromise with the Bush administration, the bill abandons the formal certification requirements of S. 321. In its place is an enhanced self-certification process using spot checks to investigate the eligibility of individual Indian preference enterprises. Criminal penalties and weighted preferences for Indian preference enterprises would provide tangible benefits to reservation communities.

Furthermore, the bill authorizes Indian tribes, intertribal organizations, and certain associations of enterprises to challenge the self-certification of questionable Indian preference enterprises.

At this point, I wish to make one brief comment regarding the Administration's testimony today.

I appreciate the efforts the BIA and IHS have made to cooperate with committee staff on the draft legislation before us. This committee has been making a good faith effort to work with the Administration to formulate a reasonable, effective legislative product that can be enacted this year.

I sincerely hope that the Office of Management and Budget and the remainder of the Administration recognize that fact and are willing to join us in this effort.

With that, I would like to welcome our first panel of witnesses and thank you for being here.

Before we turn to our first panel, I call on my colleague, Senator Daschle of South Dakota, for any opening comments that he might have.

Senator DASCHLE. Mr. Chairman, I have no opening comments. I appreciate your opening statement and wish to associate myself with your remarks.

This is an important hearing. It is a very important issue. I'm pleased to be a part of this afternoon.

Senator CONRAD. Thank you very much, Senator Daschle. We appreciate the fact that you have been able to join us here.

The first panel will consist of: Dave Matheson, Deputy Commissioner for Indian Affairs, the Department of the Interior and George Buzzard, Associate Director for the Office of Administration and Management, IHS, Rockville, MD.

Please come to the witness table.

We'd ask that you summarize your testimony. Please be assured that the full testimony will be made part of the record.

Mr. Matheson, welcome.

STATEMENT OF DAVE MATHESON, DEPUTY COMMISSIONER FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. MATHESON. Yes, Mr. Chairman; thank you.

Senator CONRAD. I assume you are here to endorse heartily this bill, and to put your full weight behind it?

Mr. MATHESON. My statement is to address the proposed bill to increase employment and business opportunities for Indians and for other purposes.

The Buy Indian Act provides discretionary authority to the Secretary of the Interior which allows for the award of contracts to Indian firms on a preferential basis. Contracting with Indian economic enterprises represents one way that the Federal Government can help alleviate widespread unemployment and underemployment that is common to many reservations.

The Buy Indian Act is one of the vehicles that can be used to help improve this situation.

In the fall of 1989 this committee formed a Special Committee on Investigations to examine the Administration of the BIA and, subsequently, the Buy Indian Act.

The committee heard testimony in hearings, and the final report indicated that the Buy Indian Act was being abused through the use of front companies. In this manner, non-Indian individuals would receive all or most of the profits and financial benefits of contracts awarded under the Buy Indian Act to companies with one or a few nominal Indian owners.

The Special Committee recommended the enactment of legislation and improved procedures to eliminate the abuses.

Under a provision in the BIA Manual, the BIA is required to contract under the Buy Indian Act unless an Indian firm is not available or a waiver is granted by the Assistant Secretary for Indian Affairs.

Although the Buy Indian Act authority had not been used extensively until 1963, the BIA now contracts extensively with Indian organizations.

In 1999, total contracts awarded under the Buy Indian Act were equal to $45.7 million. This represented 44 percent of all BIA commercial contracts.

Most of the Buy Indian Act contract dollars are for the construction of roads and bridges, and others are for a variety of services, ranging from architectural and engineering design to trash collection.

The Administration has not had adequate time to review the proposed legislation. We will provide the committee with a full report on the proposed bill within the next few weeks.

Thank you.

[Prepared statement of Mr. Matheson appears in appendix.]

Senator CONRAD. Thank you for that testimony.

Next we will hear from George Buzzard, the Associate Director for the Office of Administration and Management, IHS, Rockville, MD.

Welcome.

STATEMENT OF GEORGE BUZZARD, ASSOCIATE DIRECTOR FOR THE OFFICE OF ADMINISTRATION AND MANAGEMENT, INDIAN HEALTH SERVICE, ROCKVILLE, MD, ACCOMPANIED BY MITCHELL PARKS, SUPERVISORY PROCUREMENT ANALYST FOR THE DIVISION OF CONTRACTS AND GRANTS POLICY

Mr. BUZZARD. Thank you Mr. Chairman and members of the committee.

I have with me this afternoon Mitchell Parks, the Supervisory Procurement Analyst, Division of Contracts and Grants Policy, in the Office of Administration and Management, IHS.

IHS is the Federal agency charged with administering the principal health programs for American Indians and Alaska Natives. IHS is unique in its service to the Nation. Not only does it provide services to over 500 Federally-recognized tribes, but, in its integration of many available preventative, curative, and rehabilitative activities into a single, national, comprehensive, community-oriented health delivery program.

The complexity of the IHS program has been compounded in recent years by the growth in the last decade of two major component systems: A Federal health care delivery system administered by Federal personnel, and a tribal health care delivery system administered by tribes and tribal organizations.

In addition to contractual arrangements, IHS provides health services to urban Indian individuals through 33 urban health programs.

In fiscal year 1991, 702.5 million of IHS's fiscal resources were placed under contract to tribes, authorized tribal organizations, and commercial contractors, including Buy Indian contractors.

Buy Indian contracting in 1991 totalled 40.1 million. Through its Buy Indian policy issued by Doctor Edward Rhodes in July 1990, the IHS continues to support the principles of the Buy Indian Act.

But because IHS is an agency whose primary mission is to provide or assure high-quality and timely health care to Indian people, it is imperative that we maintain flexibility where, at times, Indian preference and procurement must be superseded by effective health service delivery.

Unfortunately, Mr. Chairman, the Administration has not had time to formulate its provision on the draft legislation, but we will be providing you with our comments within the next few weeks.

Thank you.

[Prepared statement of Mr. Buzzard appears in appendix.]

Senator CONRAD. Thank you very much for your testimony.

Was there a recommendation from IHS or from BIA on what position your agency should take on this bill before you ran into the road block of the Office of Management and Budget? Was there a recommendation to OMB from either of your agencies on what position your agency should take on the bill at the hearing here today?

Mr. MATHESON. Although BIA has had time to extensively look into this area, to propose and recommend our own solutions to the problems that are now well-documented, the Administration, the other Federal agencies that are affected by it, have not had time, and therefore the Administration requests a common position until that review and analysis has been completed by all of the Federal agencies.

Senator CONRAD. That's a good answer, but it doesn't answer the question I asked. The question I asked was: Did your agency have a recommendation on what position you should take on this legislation?

Mr. MATHESON. Yes; our agency has a position, and is rather well versed on the issue. I think that—

Senator CONRAD. What was the recommendation?

Mr. MATHESON. Our recommendation was that the bill be supported with some modifications.

Senator CONRAD. All right.

Mr. Buzzard.

Mr. BUZZARD. Yes, Mr. Chairman; the IHS generally supported the proposed draft, with some clarifications on some items.

Senator CONRAD. All right. Fair enough.

Could you tell us Mr. Matheson, what areas of the draft did your agency feel ought to be changed?

Mr. MATHESON. Mr. Chairman, I would ask your indulgence one more time that you would allow the Administration to come in with a common position on these issues and that I could withhold any specific remarks on the bill until that time.

Senator CONRAD. Well, I appreciate their wanting to have a unified position, and we will be glad when there is one. But we really need to move the process forward.

You know, the purpose of the hearing is to get information so that we can improve legislation. And I'm very interested in what you think—your agency thinks—ought to be done to improve this bill.

I understand it is not the Administration's position. I'd even accept that it is not a formal position of BIA. But I would urge you and implore you, if you've got observations, you could phrase them as preliminary observations, you could phrase them as tentative observations. If you have views on how we could improve this legislation, even if they are subject to change, I would be very interested, and I know the committee would be interested to hear them, because our desire is to get something done.

I know that's what the Administration would like to do, too. We've got a problem out here. We all know the problem. We've got a lot of evidence on what the problem is. Now we need a solution.

I think that requires all of us to work together to put our heads together and come up with what is the best thing we can do to solve these problems.

So do you have thoughts—any thoughts—about what could be done to improve this bill?

Mr. MATHESON. Let me say, first, that I and the BIA support, in principle, the goals of this draft legislation. I think the problems have been identified and the solutions to those problems are pretty well addressed by this bill.

We understand there were some last-minute changes to the bill that we were provided a copy of on Friday and Monday regarding a set 5-percent goal If those modifications were to be maintained, we would appreciate that.

Also, I think it may be worthwhile to look at limiting the scope of the bill to, instead of all Federal agencies that do business with Indian tribes, those agencies that now are already subject to the "638" contract or Public Law 93-638 amendments.

Senator CONRAD. Let me ask you this question. I appreciate those observations. I think that's constructive and very useful to know some of your thinking.

The certification process that is in this draft—is that moving in the direction, or has it achieved the position that could receive your support? Does it make sense to you, the certification procedures that are in this bill?

Mr. MATHESON. Because we have come up here not prepared to talk about the bill, I don't have my notes in front of me. I believe that you are talking about self-certification with some kind of random spot check capability. I believe that would be a great improvement over the current way that it is done.

Senator CONRAD. And what is your thinking on that? What is the reason that you see that as being a better approach?

Mr. MATHESON. The problems of the current way that we do business include front companies. That has been documented by reports from Congress. I think that, although it may be feasible to do whole and complete certification inside the Federal Government, at least some capability to go out and check and make sure that people are certified Buy Indian firms is important.

Senator CONRAD. All right.

Let me ask you this question. We are going to hear testimony later today from Mr. Stallings, and part of his testimony expresses his view that a major reason historically for the limited success of the Buy Indian Act has been the failure of BIA, IHS, and HUD contracting officers to understand the importance of doing business with Indian companies. What is your reaction to that observation?

Mr. MATHESON. I think that we understand the importance very well, very deeply, and take it very sincerely.

Senator CONRAD. Are you speaking for BIA now?

Mr. MATHESON. Yes.

Senator CONRAD. Do you have any reaction on IHS or HUD whether or not they have that same commitment? He's right next to you there. I don't think he is armed.

Mr. MATHESON. I'm sure they intend very well.

Senator CONRAD. So you would dismiss Mr. Stallings' observation?

Mr. MATHESON. No; I'm sure that there are probably many personal reasons and experiences that lead to that kind of a comment.

Senator CONRAD. But you have not seen evidence that would suggest his conclusion?

Mr. MATHESON. No; not in the BIA.

Senator CONRAD. Not in the BIA?

Mr. MATHESON. No.

Senator CONRAD. How about HUD?

Mr. MATHESON. I haven't seen it in HUD and the other Federal agencies because I don't work there.

Senator CONRAD. Are you a lawyer? [Laughter.]

You are such an honest-looking fellow.

Mr. MATHESON. I'd rather not comment on that one. I don't tell lawyer jokes any more now that I work in Washington.

Senator CONRAD. Okay.

Let me ask this question of you. The draft bill provides for the creation of an alternative dispute resolution mechanism within the Department of the Interior. In our view, such a mechanism is needed to expedite contract disputes between the Department and the various contractors.

Do you think the Department and those with whom you contract could benefit from an alternative dispute resolution mechanism?

Mr. MATHESON. Sir, I came up here with the one statement that I read, and I don't have notes or preparation to answer that question. I'm sorry.

Senator CONRAD. Now you can do better than that. I know you can. This is a simple question here. Really, you can do better than that. Alternative dispute resolution. Do you think your agency would benefit from that? You've got a view on that. I know you do. We have already established you are not a lawyer.

Mr. MATHESON. I guess we would be open to looking at any option that would expedite the way we conduct business and resolve disputes and get people paid and contracts awarded.

Senator CONRAD. That's the answer?

Mr. MATHESON. Yes.

Senator CONRAD. You know, you wonder why this country is in trouble? What do you think the American people would think if they were sitting in here today? Here we've got a committee of Congress, we've got a bill before us—a bill that you have had down there for 2 or 3 weeks—and the underlying legislation that you have had before you for a very long time—the President vetoed it. Here we are trying to move the process, get a bill passed, and you represent the Administration, we represent the Congress, and you come in here and do not have any answers to any questions. What do you think the American people, if they were watching this, would say about this?

Mr. MATHESON. I think any fair-minded person watching would know that I have already stated that the Administration and the other Federal agencies have had 1 day to look at it, and they all asked—

Senator CONRAD. But not your agency. And I am asking you questions about your agency, not about other agencies. I am asking you questions about your agency, and you are telling me you cannot answer these questions about your agency.

So if we want to be fair-minded, let's deal with what the questions are. They are about your agency. And you tell me you cannot answer, and you have had this for 2 or 3 weeks.

Mr. MATHESON. You have asked me to answer on behalf of the Administration, and I've tried—

Senator CONRAD. No, no, no. I have asked you very specifically about your agency. Now you tell me you have no answer?

Mr. MATHESON. Would you repeat the question?

Senator CONRAD. My question is: Do you think alternative dispute resolution, the mechanism for alternative dispute resolution that is in this draft, would expedite contracts disputes between your Department—I'm not talking about other Departments, but your Department—and contractors?

Mr. MATHESON. Again, because I have been prepared with only this statement, I don't have my notes and I cannot recollect specifically what that section calls for in resolution dispute, so it is difficult for me to answer that question with any directness or accuracy.

I apologize that it appears that I may be side-stepping the issue, but I honestly—

Senator CONRAD. It is not a matter of appearance. You are sidestepping the issue. I asked you a direct question, and I get mumbo jumbo as an answer. Frankly, I think what is occurring here is an embarrassment to the agency. I really do.

Now, I understand the Office of Management and Budget says the Administration doesn't have a position. I think it is inexcusable, given the history of this bill—vetoed by the President. We work on a draft to meet the objections of the Administration, we call a formal hearing, you got the draft for 2 or 3 weeks, and we ask what the position of your agency is and we get no answers.

How are we going to do anything with this kind of approach? I really don't understand it.

Mr. MATHESON. I can repeat that we would be glad to get you a full analysis and report of our thinking and finding on the bill within the next few weeks.

Senator CONRAD. Unfortunately, the hearing is today.

Mr. MATHESON. I said that I am—

Senator CONRAD. I know what you said. You don't need to repeat it. I got the message.

Mr. MATHESON. Fine.

Senator CONRAD. As I say, I think it is a pretty poor way to do business. The Administration doesn't have a position for the whole Administration. I understand that. I don't understand why BIA can't answer simple and direct questions about a bill draft they have had for 2 or 3 weeks—simple and direct questions. That's inexcusable.

Mr. MATHESON. I answered your question. The BIA supported the bill as it went over to OMB, with some modification. And I told you what I was prepared here to talk about. As far as the exact detail, I'm just not prepared to do that.

We can get to it in the next few weeks, I'm sure.

Senator CONRAD. Mr. Buzzard, are you any more prepared to answer questions than the BIA? Is the IHS any more prepared to answer questions than what we have seen here?

Mr. BUZZARD. Well, as I have mentioned before, Mr. Chairman, in general the IHS would support this bill because it does offer IHS greater opportunity to work with and on behalf of Indian people throughout the United States.

I think that developing reservation economies is a major thrust of this Administration, and I think the Indian Business Enhancement Act does that.

Senator CONRAD. I appreciate that.

Before I go into the direct questions I'll have for you, I'd like to just send a message back to BIA.

When the head of the BIA had confirmation, he was asked if he would come before Congress and testify when requested to do so. And I'd suggest you tell the head of the BIA to go back and look at what kind of answers he gave. That's standard for anyone who goes through the confirmation process. Will they come and testify before Congress when asked?

If people don't answer affirmatively, they don't get confirmed. And, to me, this is very close to being an unwillingness to come and fulfill a commitment that was made under oath. That's the way I view it.

Mr. Buzzard, for the IHS, for what purpose does IHS utilize the Buy Indian Act today?

Let me just give you an example. Do you use the act to procure medical supplies?

Mr. BUZZARD. We spent $40.3 million under Buy Indian last year. Alcohol and substance abuse consumed about 27 percent of that, which was about $11.2 million; in construction, about $7.2 million, which is about 18 percent: and urban health services was another $12.1 million, which was about 29 percent of that total. And then there were some tribal health services which were about $6 million. Then there were some other miscellaneous kinds of things that we bought such as janitorial services, trash, and that sort of thing, which was about $3 million. That totals to about $40.385 million for the IHS contracting under Buy Indian.

Senator CONRAD. Can you tell us what kind of problems you have had with Buy Indian Act and whether or not this draft, in your judgment, will address those problems? If you were to tell this committee what's the most significant problem you've encountered with Buy Indian Act, what would that be? Or have you found that it is relatively problem free?

Mr. BUZZARD. It is not exactly problem free. We do have some problems with interpretation of current policy from some of our contracting officers. We are working to try to rectify that.

I believe that this bill would help in some respects in clarifying that for the IHS contracting officers in the field.

Senator CONRAD. And self-certification—this notion that we'd have a self-certification process and have basically an ability to audit, to make certain that people are being straight with us, what is your sense of that? Do you think that would work?

Mr. BUZZARD. In my personal opinion, yes, I believe it would.

Senator CONRAD. Okay. Can you tell us how the current Buy Indian Act affects your agency's procurement of medical services? Do you use it for medical services?

Mr. BUZZARD. Not as a whole, Mr. Chairman. Medical and pharmaceutical supplies are generally bought through the shared procurement contract that we have with Department of Defense, Veterans Administration, and Public Health Service. There are really no Indian firms that manufacture medical supplies or pharmaceutical supplies, so we are generally having to go to those shared procurement contracts to purchase our medical and pharmaceutical supplies.

Senator CONRAD. So there is not really an existing opportunity to apply the Buy Indian Act in those areas?

Mr. BUZZARD. No; there is not. However, we do administrative supplies such as pencils, papers, and that sort of thing, we do several different ways—open competition and other ways.

Senator CONRAD. All right. Perhaps the most important question I can ask you is: As you know, the draft bill includes percentage goals for various agencies within the Department of Interior. Those percentage goals relate to contracting under the Buy Indian Act provisions. Do you believe such a goal ought to apply to the IHS?

Mr. BUZZARD. Again, I can only give you my personal opinion. I believe we are already meeting that 5-percent goal. I would again—I believe that was one of our points for clarification, because I believe that was directed at the Department of Interior, and I believe HHS has a much larger budget than they do, and we need to try to figure out how that would translate over into HHS.

Senator CONRAD. In terms of your agency, you believe you would already meet the 5 percent goal?

Mr. BUZZARD. Yes, Mr. Chairman; we do. I believe we are just a little bit over the 5-percent goal.

Senator CONRAD. Okay. So if we were to apply that kind of goal-setting to your agency, how should such a goal be structured? We're talking about the 5 percent. What is your sense of how we could design that?

Mr. BUZZARD. Mr. Chairman, I believe that—again, this is my own personal opinion—I believe that we could probably do that based on the total dollars contracted out. That would raise the 5 percent, or the $40 million that we currently contract. I believe we contract out something like $700 million.

Senator CONRAD. And you don't believe that kind of thing would be a burden for the agency?

Mr. BUZZARD. Well, it could possibly be a burden, yes. But I have no way of responding to that question. We were certainly able to go over the 5 percent, the goal now. But the biggest part of our dollars go into pharmaceutical and medical supplies. It could possibly be a burden, but I would hate to say yes or no at this point.

Senator CONRAD. All right.

Page 3 of your testimony states that IHS purchased $188.2 million worth of goods and services in quantities of less than $25,000. Can you give the committee some idea of the kinds of contracts you are talking about here, and what types of entities you were contracting with?

Mr. BUZZARD. I'd like to defer that question to Mr. Parks, Mr. Chairman.

Senator CONRAD. Fine. Welcome, Mr. Parks.

Mr. PARKS. Mr. Chairman, the IHS uses a wide variety of small contractors, vendors, both on and off reservation that are close to reservations to buy certain kinds of goods and services on an emergency basis or a one-time-only basis for specific medical supplies.

We also deal with solely-owned Indian proprietorships that have distributorships in our local areas where we can buy some pharmaceutical and other medical supplies, but they are relatively small items.

Unfortunately, we don't track necessarily who all those people are right now, but we can get that information for you in a relatively short period of time, I think.

Senator CONRAD. Could you tell us if any of those contracts go out on a Buy Indian Act basis?

Mr. PARKS. Yes; in fact, they are not contracts. They are quotations usually for small items where we need a particular kind of typewriter repair or something of that sort. We use the standard quoting methods that the Federal Government uses to get those small things done.

We also use the $125,000 provision for some very small construction contracts, individual well-drilling contracts on reservations, and things of that sort.

Senator CONRAD. Let me ask you this: Would it be important that those relatively small-dollar contracts be exempt from the Buy Indian Act provisions?

Mr. PARKS. In my personal opinion, I would hope that they would not be exempt. There are a lot of small Indian businessmen out there that continually utilize the provisions of the Buy Indian Act for their livelihood.

Senator CONRAD. You would hope that you would not be exempt?

Mr. PARKS. That's right.

Senator CONRAD. In that area of business activity, would you meet the 5-percent goal currently?

Mr. PARKS. It would enhance, I believe, our meeting the 5-percent goal. If I were able to break down $188 million, I believe it would simply enhance our position.

Senator CONRAD. The question I really had was: Of the $188 million, does 5 percent of that currently go to Buy Indian Act—

Mr. PARKS. I don't know. I would have to do some extensive testing of our data system to see if I could come up with that answer for you.

Senator CONRAD. What would your impression be, just given the knowledge that you have in your day-to-day operations? Is it your sense that you would meet that goal, or would you be close to it, or—

Mr. PARKS. In my opinion, I believe we would be slightly under it.

Senator CONRAD. Slightly under it. But relatively close to it, I take from your testimony?

Mr. PARKS. Very possibly.

Senator CONRAD. All right.

Anything else that you can tell us from looking at this draft legislation in terms of what you see that—if it is a personal opinion, that's fine. Looking at it, what could be done that would improve it? Is it overly bureaucratic? You help run that agency. Looking at these provisions, is it overly bureaucratic, for example, as you look at it?

Mr. PARKS. I think, as one of the things Mr. Buzzard alluded to, the provisions perhaps that speak to establishing an Indian Business Development Office with a director, a database for Indian firms, and things of this sort, permanently focused to Interior—I think one of the points of clarification that IHS would like to find

out about is how that would impact on IHS and what our responsibilities would be.

Absent that kind of information, it would be difficult to say whether it is overly bureaucratic or not.

Senator CONRAD. All right. Anything else that you would want to add?

Mr. PARKS. Not at this time.

Senator CONRAD. Anything that you want to bring to the attention of the committee?

Mr. PARKS. There is one thing, Mr. Chairman, if I may. Another point of clarification—and this is just my personal opinion. One of the things that is clarified in the draft bill—or defined, I should say—is what an Indian reservation—what the internal boundaries of an Indian reservation are. I have personal concerns about how that applies to the State of Oklahoma and the State of Alaska where, in the State of Alaska, we have only one traditional reservation, and in the State of Oklahoma we have no traditional reservations.

There had been some other legislation that was proposed a couple of years ago relative to the Indian Self-Determination Act that changed some definitions to the term "Indian Country," which is already defined by Federal law. One of the points of clarification that I personally would like to see made is: what does the internal boundaries of an Indian reservation mean when there are no traditional reservations available?

Senator CONRAD. That's a very good point. A very good point.

One of the problems we have any time we do legislation here is that there are all of these unanticipated consequences in the real world, and unforeseen circumstances. You make a very good point.

I think we'd find if we looked across the country it wouldn't just be those States perhaps that would be affected. That's a very useful point that we will try to pick up on and address.

If there is nothing else—any questions from any staff people that you would like to see get answered?

[No response.]

Senator CONRAD. We can't put questions to BIA, because they don't have any answers here today, but IHS seems to have come here and figured out a way to answer questions.

All right. Thank you very much.

Next we'll hear from a second panel: Steve Stallings, President of the National Center for American Indian Business Development; Vernon Mestes, Vice Chairman, Cheyenne River Sioux Tribal Council, Eagle Butte, SD; Ed Hall of Transportation Associates, Incorporated, Albuquerque, NM; Ed Danks, the National Indian Contractors Association, Bismarck, ND; and Mike Anderson, the Executive Director of the National Congress of American Indians, Washington, DC. Mr. Danks will be accompanied by Myra deMontigny, Northwest Piping Company, Grand Forks, ND.

Welcome.

I hope all of you came better prepared than the BIA. I know you have.

In case you are wondering why it is hard to get things done in Washington, we just saw a perfect example. We have been working on this legislation for a very long time, had it up before Congress,

passed, vetoed by the President, and he had some reasons. He had some reasons to veto it, whether you agree or disagree with the reasons. We have tried to address those so we'd actually get a bill passed.

That's what this hearing is all about—trying to see if we are on the right course and to see if we can achieve a final result that will improve the situation.

I have just been advised that there is a vote that I'm going to have to go cast. I will try to do it very quickly. We'll take a 15-minute break and I will return.

[Recess.]

Senator CONRAD. This hearing before the Select Committee on Indian Affairs will resume.

We will hear first from Steve Stallings, President of the National Center for American Indian Business Development from Mesa, Arizona. Welcome. Good to have you here.

STATEMENT OF STEVE STALLINGS, PRESIDENT, NATIONAL CENTER FOR AMERICAN INDIAN BUSINESS DEVELOPMENT, MESA, AZ

Mr. STALLINGS. Thank you, Senator Conrad. And I would like to thank the committee for its invitation to speak on this piece of legislation.

I will begin by stating that this particular piece of legislation can do more in the immediate future to improve the lives of American Indians than perhaps any other piece of legislation in this current session.

I would also like to commend the current leadership of the BIA and the IHS for helping to reach at least this point along the process for the combined effort of putting this bill together.

While my written comments are extensive regarding the justification for increasing the amount of procurement available to American Indian-owned companies and tribal enterprises, I'd like to point out that in 1987 the Bureau of Census did a special study on minority business ownership. American Indians ranked last in that study.

Just for American Indians to reach parity with other minority-owned companies in the amount of revenues they receive, there has to be a 200-percent increase in the gross sales of Indian-owned companies. So clearly, Indian-owned companies and tribal enterprises are the smallest of the small businesses.

Currently, nationwide there are about 3,000 American Indian-owned companies that are in the construction trades. If we look at the amount of construction from all combined agencies, including the IHS, the BIA's regular facilities budget, the roads program, and housing construction, there is over $500 million in available business opportunities that could directly impact the sales levels of these companies.

We are in general support of the draft legislation. I have extensive comments on the provisions of the act and will not cover all those in detail but will concentrate on what I think are the most important provisions.

The failure of the Buy Indian Act did not come as a result of fronts or the lack of inability to perform on the part of the estimated 3,000 Indian construction companies. Rather, it has been the failure of past administrations to embrace the concept of Buy American Indian as an important economic development strategy.

Clearly, there is a lack of depth of understanding about how this can impact our communities, how it can create jobs, new sources of income, and even start new businesses to serve as a source of materials and supplies as building and construction takes place in Indian country.

It has proven itself out. Doing business with American Indian-owned companies creates Indian jobs. For on reservation, tribal, and individually Indian-owned businesses, the labor force is 92 percent American Indian. In off-reservation Indian-owned businesses, over 60 percent of the employees are American Indians.

Increasing the amount of business that goes to these companies will greatly create more Indian jobs and new sources of income.

We feel that the Buy Indian Act in the past has provided too much latitude to the bureaucracy to circumvent the application of the act and to direct procurement elsewhere. This has been explained by the fact that they can't find Indian companies, Indian companies do not perform, or they cannot put together the business financial, management, and technical expertise to perform. But we know that is not true, because we know that there are a substantial amount of Indian-owned companies that are doing millions of dollars of work successfully each year.

The certification and enforcement of preferences has been neglected and avoided by contracting officers of the BIA, IHS, and HUD.

Also, the current system of self-certification lacks a due diligence process upon award of a contract and does allow fronts to continue.

To ensure only eligible Indian companies get preferences, a due diligence step must be included in the contracting process to confirm self-certified companies as Indian preference enterprises.

The unwillingness of agencies to break out large procurements like the construction of hospitals into sizable jobs excludes many capable Indian-owned enterprises who, due to their bonding capacity, could perform this work in phases of two or three phases. It is very simple to break out construction of large facilities this way. Even road construction could be broken out for example, grading and paving and other phases of road construction.

Non-Indian prime contractors who submit an Indian preference subcontract plan at the time of bid involving Indian subcontractors must be required to specifically name those subcontractors and the subcontract price to prevent them later bid-shopping and circumventing the intent of Buy Indian.

The inclusion of an Office of Indian Business Utilization and Indian enterprise data center are excellent mechanisms to provide for accountability of the act, and we are fully supportive of these mechanisms.

I would just like to mention two or three specific points in my written comments regarding provisions of the act.

First, we think it is important to specifically mention the kinds and types of procurement at the agencies to which this act applies.

We would suggest that things like housing, roads, facilities construction, and office supplies and products be included.

Clearly the BIA and IHS go off of the GSA list many times to purchase these goods and services, and clearly those goods and services are not being purchased from Indian-owned companies, from our experience.

Again, we suggest that the subcontract plan for non- Indian prime contractors require that they cite the subcontractor and the subcontract price for their Indian preference enterprise subcontracting.

We specifically recommend that the act include specifying the contracting agency budgets of the IHS, the Housing and Urban Development's Office of Indian Programs, and the Administration for Native Americans, who purchase consultant services and non-construction procurement.

While a small business set-aside program is an effective way of targeting procurement, we would recommend that your thresholds of $1 million for construction and $100,000 for non-construction work are too low. In today's economy it doesn't take very long in a construction project to add up to $1 million. We would recommend thresholds of $3 million and $6 million as the levels for thresholds for small business set-asides.

Our specific language regarding the Indian preference would be that prior to the actual award of a contract the Secretary would verify the accuracy of successful bidders preference affidavit by conducting an on-site visit to the enterprise and other due diligence related to the affidavit.

Contracting officers are already doing probably about two-thirds of this exercise. They have to check the technical and financial capability of contractors. This would only add a third element to their process they already have in place and a due diligence exercise for verifying Indian preference.

I will move forward to our final comment regarding the data center, which we think is an excellent idea, however, we believe that the data center can be a source of increasing the knowledge and advance information available to Indian contractors by using that data center as a procurement center to match advance bid information from these agencies to Indian capabilities.

There are a number of existing centers like this in the Defense procurement area where we match up the capability of a particular contractor with a Defense procurement need, and then you have people on the front end of things bidding and estimating, lining up the bonding to be able to do that work once it comes available.

It gives Indian contractors heads up and the ability to be more successful once that work goes to bid on the street.

That concludes my comments, Mr. Chairman, and I would be happy to answer any questions you may have.

[Prepared statement of Mr. Stallings appears in appendix.]

Senator CONRAD. Thank you very much for that very important and constructive testimony. We very much appreciate the thought that went into it.

Next we'll hear from Vernon Mestes, Vice Chairman of the Cheyenne River Sioux Tribal Council, Eagle Butte, SD.

Welcome.

STATEMENT OF VERNON MESTES, VICE CHAIRMAN, CHEYENNE RIVER SIOUX TRIBAL COUNCIL, EAGLE BUTTE, SD

Mr. MESTES. Thank you, Mr. Chairman.

Mr. Chairman, I would just like to introduce myself to the committee and tell you that, in my own tongue [remarks in Native tongue], which means, translated, I greet you all with a heartfelt handshake.

My name is Vernon Mestes. My Lakota name is Good Horse, which is, in our tongue [native word.] I'm the Vice Chairman of the Cheyenne River Sioux Tribe, and I am also on our TERO Commission. I'm a commissioner on TERO with the Board of Commissioners.

I also listened with great interest here because I Chair our Health Committee at home, and what I was hearing this morning was of a lot of interest. A lot of interesting things I had to mull over in my mind.

I also sit on our IBD Committee, which is our Industrial Business Development Committee. I cochair that. It does our economic development at home.

I sit on two health boards off the reservation. I also sit on an off-reservation school board.

So a lot of this stuff that was talked about today is going to impact, I guess, in those various boards and organizations that I sit on.

I also sit on our housing authority at home, which they talked about HUD here, so I guess I have got a lot of hats to wear.

And so, as a result of that, I take great interest in the economic development aspect of this legislation. That was its original intent, I am sure.

And so, having said that, I want to thank you for the opportunity to appear here today before you and present our concerns on the Indian Business Enhancement Act.

The statements that I will make today will reflect the concerns that we have back on our reservation.

There are requirements that I guess I want to touch on. I am one of the original commissioners on our TERO Commission which we organized in 1985, which is ordinance 42(a), and I am the last original one still sitting on the Commission, so I guess it is kind of fitting that I be here today to see how far we have advanced with our TERO Office.

We have provisions in our TERO ordinance under the Indian preference requirements that do the same thing that this act will do currently, and those requirements also apply to any entity doing business on our reservation.

As a result of that, I have a lot of experience as a commissioner in reviewing the applications for Indian preference certification. Sometimes there are questions that come up when applications are submitted and they are brought back to the commissioners for review.

As a result of that, I am aware of a lot of the problems that try to get around us, I guess, and come to us sometimes because of—I guess over the years there has been an acceptable thing going on across the country when it comes to Indian reservations that you

can get around regulations by loopholes, and what not, and we are trying to plug up a lot of those with our TERO ordinance.

And so we sit as judges when there are disputes, and I want to just touch briefly on that. It was mentioned a while ago—alternative dispute resolution. We do that currently with our Board of Commissioners, and we have never had—the next step after going through the commissioners at home is to go to tribal court. We have never had to go to tribal court yet. We have always been able to resolve any disputes just by a hearing process. And we have had satisfaction to everybody's best interest, I think, when we do have the hearings.

I think this legislation will continue to enhance what we already have, and I think it will further strengthen our TERO organization by having this in place.

As a general statement, our experience has been that Indian preference, if properly implemented, can be a very valuable tool for promoting Indian employment and Indian economic development.

Second, I believe the proposed bill is a good piece of legislation that will further promote Indian employment and economic development in conjunction with the tribes' efforts.

In regards to specific aspects of the bill, in the areas of certification and monitoring, tribal participation is a must. We believe that very strongly.

Currently we have got a very good crew out working in our TERO office that does monitoring. I think that a certification process could go a step further by allowing tribes to be a part of the certification, even on the prime contractors, because, as I stated here earlier, sometimes there are efforts continuously to have fronts come in, and I guess somehow even erode the few dollars that we get, because those dollars that are earmarked for reservations from Washington's viewpoint—I would assume you people up here think that they are going back and impacting on our reservation, and oftentimes they are not. Contractors will come in and siphon them off and they are gone with them. That's a very big concern.

We'd like to see ourselves be able to monitor the primes or have some kind of input in the certification of those prime contractors, as we do currently with all the rest of the contractors—all the subs and anybody else, we currently do that.

So monitoring of contracts and the contractors is a very useful tool for us on Cheyenne River through our TERO office.

With the self certification process presently being used by the BIA on construction projects located on the Cheyenne River Reservation, there is no—as was mentioned earlier, there is no in-depth study of applications submitted or Indian preference certification, so we would like to see that either added or have some way to let the tribes—especially those with reservations and those with TERO offices, at least—get involved in this process or through this legislation somehow.

I guess I sat here and I observed one of the things that I'm about to say and that's that because of certification the way it is now, we have people challenge certification the way it stands. As a result of that, it creates delays. And because of our short construction season at home, those delays are really detrimental to us because

what happens is the season runs out on us. Sometimes we are into the next year.

I don't know whose fault it is. Sometimes it is the BIA's fault because they certify people that are challengeable, I guess. If they didn't do that, there wouldn't be the delays. I think we need to look at that aspect of it because we can't afford to have delays out in our country. The weather is a big factor in how we do our—

Senator CONRAD. Weather is a lot worse in South Dakota then in North Dakota, isn't it?

Mr. MESTES. Yes; we get their cold air. They don't warm it up when they send it down.

I guess I just wanted to make that point, because it does affect us overall economically, and, again, those dollars that don't stay on our reservation don't mean much to us. If a contractor comes in and brings his own crew and they go back to someplace else after their job is done, or even while they are working, it does very little for us within our boundaries of our reservation. It does very little for any of our businesses and those kind of things.

Senator CONRAD. Can I just stop you there and ask you a question?

Mr. MESTES. Yes.

Senator CONRAD. We've got a provision that allows the tribe to challenge, and also the ability in this draft to allow the tribe to precertify. Are those along the lines of what you are thinking of that would be useful?

Mr. MESTES. That would be very helpful for us. In fact, it probably is the answer to some of our affairs because without it we run into these situations I laid out before you just a while ago, and we can't afford to have delays.

I said also—I forgot to say I sit on a road committee at home, and I'm also a heavy equipment operator—a former one, now—and I have worked in construction a lot, all the way from survey work to pounding the stakes to moving the dirt. So I know what happens when you go out to a job site without Indian preference and get turned down and you're on a reservation that has a very high incidence of unemployment. I know the feeling.

I have had to leave the reservation sometimes because it was the same whether I stayed or not. I had to deal with non-Indian firms. I had to deal with all these things. And I got very little preference any place, I guess, so I think the preference clauses in this kind of legislation would be beneficial, at least currently the way things are across the country.

I also see this bill as probably something that would allow us to continue to do what we are doing. It will continue to let us seek our own destiny somehow, I guess. That's what we continuously talk about—self-determination and those kinds of things.

I have got more things in my written testimony here, but I have said all the basic things that I really want to say.

I want to thank you again for allowing me to testify here today on behalf of my tribe and my people at home.

[Prepared statement of Mr. Mestes appears in appendix.]

Senator CONRAD. Thank you very much for being here. We appreciate your testimony.

The full written testimony will be made part of the record, which will be very useful to us, as well.

Let me just say that I've got another vote.

Mr. MESTES. Just one last thing. I wanted to make some recommendations, I guess, and the recommendation I would make is that you do consider letting tribes do the certification on the primes where they have the means and the way to do it—especially the ones with TERO organizations. That's what they are geared up to do.

I guess in the dispute resolution process I would have you consider possibly letting it go to—if there is a TERO organization, let it go that way. If not, it should go through the tribal court systems. I would make that recommendation also.

Senator CONRAD. All right. Thank you.

I apologize, but the great thing about the Senate is, it is unpredictable. I will go and vote and I will return as quickly as I can, and then we'll hear from Mr. Hall, Mr. Danks, and Mr. Anderson. I hope to be here in 10 to 15 minutes.

[Recess.]

Senator CONRAD. Next we will hear from Ed Hall, and then Ed Danks and Mike Anderson.

I apologize, but these votes are coming fast and furious as the Senate tries to complete its business. I think we can anticipate more votes, unfortunately, and I'd just ask witnesses to perhaps summarize their testimony.

The full written testimony will be made part of the record, and I feel that is perhaps the best thing we can do to try to reach conclusion.

I apologize, but, as I said, this place is unpredictable.

Mr. Hall.

STATEMENT OF ED HALL, TRANSPORTATION ASSOCIATES, INC., ALBUQUERQUE, NM

Mr. HALL. Thank you, Senator.

I'll make my remarks very brief, sir.

My involvement with the Indian preference contracting business goes back to the mid-1960's when I was an agency road engineer with the BIA. At that time, I worked with Indian contractors and helped them by breaking projects into smaller jobs.

We started several Indians in the contracting business.

Later I worked for the Standing Rock Sioux Tribe on their Standing Rock Enterprises, which was a housing and road construction company.

At that time, the *Glover* decision in Oklahoma hit and killed that company because we were doing all of the BIA's road work under the Buy Indian Act. When they stopped the Buy Indian Act, it stopped the tribal company, which was employing 50 to 60 people every summer, so I know the effects of not having the Buy Indian legislation.

Our firm recently did a study on Indian contractors where we interviewed and held four regional training conferences for them. It was an interesting study. It confirmed a lot of the problems that we knew existed, and it was a good experience.

We have submitted a draft copy of that for the record.

In general, we find the problems affecting Indian contractors are pretty well addressed in the legislation. We feel this is a good piece of legislation. We know that it is difficult to try to please all of the interested concerns, but I think this piece of legislation does a pretty good job, and I'm sure that if it is adopted, that it is going to make a 100-percent improvement over what we have, and I think it will really give the Indian contractors an opportunity to become successful contractors.

It is disappointing to see, from our study, after 10 years, since the 1982 Highway Act reinstated the Buy Indian Act after the *Glover* decision, that there are very few legitimate Indian contractors. I think there needs to be some effort put forth so that we can look forward to the next 5 years of this highway bill and really do some development.

I want to thank you again and congratulate those people that worked on this legislation and wish you the best of luck in getting it adopted.

Thank you.

[Prepared statement of Mr. Hall appears in appendix.]

Senator CONRAD. Thank you very much.

Mr. Ed Danks, the National Indian Contractors Association, Bismarck, North Dakota. A special welcome.

STATEMENT OF ED DANKS, NATIONAL INDIAN CONTRACTORS ASSOCIATION, BISMARCK, ND, ACCOMPANIED BY MYRA DEMONTIGNY, NORTHWEST PIPING COMPANY, GRAND FORKS, ND

Mr. DANKS. Thank you, Senator Conrad.

On behalf of the National Indian Contractors Association, first of all, thank you and your staff for the invitation and the opportunity to comment.

For the record, we support this legislation wholeheartedly. We think that this particular bill is a good faith demonstration that someone is taking dealing with Indian contractors and Indian business as a good faith attempt here. For the record, we are 100 percent behind it.

We would like to commend the staff and the people who have worked on and put this thing together—just a good job of getting this thing done.

Given our support for the bill, there are four areas that we would like to highlight in the bill that, if you are in the process of picking and choosing and throwing things away and making happen, I think we have four things that we think are vital to this legislation.

The definition of an Indian preference enterprise is very well done. The fact that joint ventures are allowed and there is a mechanism that governs the joint venture and how a joint venture will operate and a review process that manages, if you will, or provides ownership of a joint venture makes sense.

On very large projects oftentimes it is necessary to put together a legitimate joint venture. What we have seen is joint ventures take the form of a front. We think this brings it out of the closet

and lets us deal with it and lays the cards on the table, and we think that's a very strong feature of the bill.

Second, we applaud the creation of the Office of Indian Business utilization. Hopefully, that office can happen. Hopefully it will get the horsepower that it needs to do what it has to do. Oftentimes in the Indian contractor community we don't have anyone to direct our concerns to.

We're not always complaining. We have some suggestions that we think might enhance the situation. Frequently our Congressmen and our Senators will bear the brunt of those administrative details, and we appreciate the support, but we think that if this office can get the horsepower and get up and go on it will go a long ways to make this thing happen.

Third, the Indian bonding demonstration program is a very positive feature of this legislation. I think I can unequivocally say that if there has been one single issue that has created the front monkey business that has happened over this deal, it is because of the inability of Indian contractors—the legitimate Indian contractor community—to access the surety bond market.

We think this bonding demonstration program will solve many of those problems—particularly the provisions of the bonding demonstration program that allow for advance payments like the Department of Defense does already—allows the Government to supply some materials. It creates a risk management situation for our surety companies who are risk managers. It makes sense, and we think it is a very positive feature.

The last feature of the bill—and I will keep my remarks short. I'd like to introduce Myra deMontigny with Northwest Piping out of Grand Forks just to share some of her comments on our last point in the bill that we think is very significant, and that is the alternate dispute resolution mechanism, the inclusion of that in the bill.

If there is one thing that we can come out of this whole process with, it would be an alternate dispute resolution mechanism.

Our bonding people, our banking people, our suppliers and subcontractors across the board see this as the most risky part of doing business with the BIA or IHS—anybody. That is a black hole.

A lot of our contractors have gone bankrupt—I can speak to that personally—because of an inability to solve a dispute.

I can tell you that it took 3 years to get a meeting to resolve a dispute that took 45 minutes to settle. If that 45-minute meeting had been held 3 years earlier, 80 Indian jobs could have been saved and an Indian company could have been kept out of bankruptcy. The liability on the part of the Government was automatically acknowledged when they dropped it into the claims process and the court process, and it just doesn't make any sense at all.

If there is one thing we strongly stand in support of, it is alternate dispute resolution mechanism.

Having said that, having gone on record as 100 percent in support of what we have before us, I'd like to, just for a moment—I know we have time here—I'd like to turn the microphone over to Ms. deMontigny, and perhaps she can share some of her thoughts, as well.

Thank you.

[Prepared statement of Mr. Danks appears in appendix.]

Senator CONRAD. Myra, could you instruct me on the correct pronunciation of your name?

Ms. DEMONTIGNY. deMontigny.

Senator CONRAD. Thank you for being here.

STATEMENT OF MYRA DEMONTIGNY, NORTHWEST PIPING COMPANY, GRAND FORKS, ND

Ms. DEMONTIGNY. It is quite an honor for me to be here.

Two major episodes happened in the past year—or actually the last 2 years—to our company that almost forced us into bankruptcy, and certainly drove us very dangerously close to insolvency.

First, we had three different projects in which we had three claims based on differing site conditions—legitimate differing site conditions.

It took us years to get them resolved. Obviously, when you encounter different site condition or a changed condition on a contract it costs the contractor money over and above what was originally estimated. That drains the company's cash flow.

It took us a long time to get them resolved. We eventually prevailed, but that was only after going through the very timely process of writing to the contracting officer, getting a denial, sending a claim, getting a denial, going to the Board of Contract Appeals, et cetera, et cetera, et cetera. That takes a great deal of time to get that resolved. In the meantime, your cash is just flowing right out the window.

In addition to that, what really hurt us and exasperated the situation for us is that we have had such a difficult time in getting payments from the Government on even our regular progress pay estimates. It has taken us—for example, we did a finished project in November 1991 that we still have not been paid for.

When you have a small company like ours where we only do $3 to $4 million worth of work a year, you cannot afford not to get paid for work that you have performed, because you have already expended the money for labor, equipment, materials, et cetera.

In fact, we are at the point right now where our surety will not give us any bond for BIA jobs at all, period.

We also are at a point with our bank which says we will continue our banking relationship with you, but you avoid BIA contracts.

Considering that, at one point, up until just this past winter and this past spring, 80 to 90 percent of our work was BIA, that does not leave us in a good position at all when we have our surety and our bank telling us to avoid the BIA.

So I wholeheartedly support the alternative dispute portion of the act, and I wholeheartedly support strict adherence to the Prompt Payment Act, which I have yet to see the BIA comply with.

[Prepared statement of Ms. deMontigny appears in appendix.]

Senator CONRAD. Maybe that's the reason they can't testify when they come before Congress.

Ms. DEMONTIGNY. We also have never been paid interest on a prompt payment. Even if our payments are up to 9 or 10 months delayed, we have not received any interest.

But that's all I really wanted to address.

Senator CONRAD. All right. Thank you very much.

Next we'll hear from Mike Anderson, the Executive Director of the National Congress of American Indians right here in Washington.

Welcome.

STATEMENT OF MIKE ANDERSON, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Mr. ANDERSON. Thank you, Senator Conrad.

I'm here to represent the views of the NCAI and our 144 member tribes.

First, we want to thank you for taking the leadership in proposing these legislative amendments to the Buy Indian Act. The original act was well intentioned and it was a good move on behalf of Congress, but the potential for this act, and also section 7(b) of the Indian Self-Determination Act, have not been met. They have been seriously under-utilized, and also abused, due to the inherent policy flaws and implementation problems that you have heard this morning.

We welcome your proposed amendments as a real step on behalf of Congress in addressing the problems of implementing the original Buy Indian Act, and also helping it to achieve the maximum benefit for Indian employment and business developments near Indian reservations.

I'm just going to summarize a few of the key points in our testimony which are laid out on page 2.

We strongly support the concept of this bill, including the following provisions:

We support granting the Secretary of the Interior the authority to apply the Buy Indian Act to Federal agencies outside of Interior, with the goal of 5 percent of Interior contracts being let through Indian preference standards.

We also support the bonding demonstration project and ask that the committee prioritize expansion of this bonding capability if the demonstration project proves successful.

Finally, another point, we strongly support the small business set-aside provision of the act on all contracts below $1 million, which NCAI understands comprises 80 percent of all BIA contracts.

So there are very many good provisions of this act. We look forward to its introduction by the committee, and also look forward to its swift passage.

I also wanted to comment just on some of the remarks made by the Administration this morning.

As you know, President Bush vetoed this legislation last year, yet there have been no moves by the Administration to bring forth their own legislative package on either the Buy Indian Act or any economic recovery legislation.

We have asked for Congress—and some of the measures have been introduced in a number of areas: The Buy Indian Act proposal that is here today, the investment tax credit and employment tax credit legislation sponsored by Senator McCain and Senator Inouye, and the OPIC legislation introduced by Senator Inouye.

There has been no move by the Administration to support any of these economic initiatives that are desperately needed in Indian country this year.

There are not many days left in this legislative session to enact this legislation, and we look forward to a companion bill on the House side. But when the Administration can't even support a provision as simple as the Administrative Dispute Resolution Act which President Bush signed last year, then we question their credibility and sincerity of pushing the favorable economic initiatives that we so desperately need.

Senator CONRAD. If I could just interrupt for a moment, I'd just say to you not only are they not willing to support, but today they aren't even willing to answer the most basic questions about the items that others have come forward with.

I tell you, I must say that today it really distresses me more than almost anything I have seen before this committee because they had an opportunity to come in here and express the Administration's point of view. They could have opposed it. They could have favored it. They could have said they would support it with changes and outline the changes they wanted to see made.

But instead we get nothing.

It is little wonder that we are not able to get results or conclusions around here when people won't even answer basic questions about legislation that is before the committee.

I think the Administration really needs to do some soul searching about what they are doing.

Mr. ANDERSON. We'd further like to implore this committee—and we'll make the same request from our member tribes—that the IHS and BIA fulfill their commitment to provide a report to this committee within the next few weeks. We hope that's soon, because there are not many legislative days left in this session.

Approximately 3 or 4 weeks from now we are going to be in the August recess, so we desperately need their attention, and we'll do as much as we can from our member tribes to bring that to the attention of the Secretary of Interior and the Assistant Secretary on these three important legislative measures—the tax credit measure, OPIC, and the Buy Indian Act proposals. We need their input immediately.

I just had a few other technical comments, as well.

IHS said they are meeting the goal of 5 percent. If that's the case, that's well and good, but why not have a goal of 10 percent or 15 percent at IHS if they are meeting their goal? The intent of the act is to get these dollars down to Indian tribes. Why not fulfill it in a more expansive way if that is possible?

Finally, the BIA notes in their testimony on page 2 that the total contracts awarded under the Buy Indian Act were equal to $45.7 million. I would request of this committee that they ask the Bureau to provide that figure without the predominant contractor in this area, which is Blaze Construction. Where does that figure lie when you take out the major contractor?

I have some familiarity with this issue because I was an attorney for the Special Committee on Investigations that looked into the problem of front companies, and I agree with Mr. Stallings that

that's not the only reason that the problem exists of not getting the money out to the proper Indian businesses. But it is a problem.

You asked earlier this morning, and, in fact, we identified the front companies in that report. I'd be interested to find out whether those companies are the same ones being certified today.

You asked earlier whether self-certification will work. I think it will work badly, but it is at least a step. I understand that has been a compromise with the Administration.

Our committee recommended that there be an office in place to investigate these certification problems. That's what we did when we were out in the field taking affidavits and depositions.

If that's not possible because it sets up another burdensome administrative scheme, then perhaps the spot checks will be a way to at least take a stab at the problem.

So we won't oppose the bill for that reason, but we are not as satisfied as we could be with that provision.

With regard to just those comments, everything else in the bill is very favorable. I think it would be a real economic boon to Indian country if this was enacted, and we strongly support it.

Thank you for listening to our testimony today.

[Prepared statement of Mr. Anderson appears in appendix.]

Senator CONRAD. Thank you very much for that excellent testimony.

I would say to this panel all of your testimony has been excellent, and I appreciate very much your coming here to offer it.

We have just had another vote called.

I'd like to make one summary statement, and it would be this: When the President vetoed the previous Buy Indian Act he had some reasons. He was unhappy with the Miller Act provisions. We have modified this draft to take account of those objections.

They objected to the certification procedures. In this draft they have been modified to meet those objections. They objected to it being overly bureaucratic. We have modified this legislation in this draft to meet those objections.

So we have attempted to come together with the Administration in order to advance this legislation, to make some progress. And I very much hope the Administration is listening and is watching and is paying attention and will respond, because this is an opportunity to advance the cause that they say they believe in—economic self-determination, economic opportunity, economic self-improvement. That's what this legislation is all about.

I very much hope that somewhere in this Administration someone is paying attention and that they will respond, and respond quickly, because, as a number of the witnesses have pointed out—Mr. Anderson most recently—the clock is ticking, and there are not many legislative days left.

If we are going to get this to become law, we need a response—and hopefully a favorable response.

I say once again how much I appreciate the testimony that you have provided here today. I think it is very useful for the committee, and we appreciate the time that you have taken.

With another vote—7½ minutes left in that vote—we will end this hearing.

Again, I say a sincere thank you to all of the witnesses for your participation here today.

[Whereupon, at 4:45 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DAVID J. MATHESON, DEPUTY COMMISSIONER OF INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

This statement of the Department of the Interior is to address the proposed bill, "To increase employment and business opportunities for Indians, and for other purposes."

The Buy Indian Act (25 U.S.C. 47) provides discretionary authority to the Secretary of the Interior, which allows for the award of contracts to Indian firms on a preferential basis. Contracting with Indian economic enterprises represents one way that the Federal Government can help alleviate the widespread unemployment and under employment that is common to many Indian reservations. The Buy Indian Act is one of the vehicles that can be used to help improve this situation.

In the fall of 1989, this Committee formed a Special Committee on Investigations to examine the administration of the Bureau of Indian Affairs (BIA) and subsequently, the Buy Indian Act. The Committee heard testimony in hearings and the final report indicated that the Buy Indian Act was being abused through the use of "front" companies. In this manner, non-Indian individuals would receive all or most of the profits and financial benefits of contracts awarded under the Buy Indian Act to companies with one or a few nominal Indian owners. The Special Committee recommended the enactment of legislation and improved procedures to eliminate the abuses.

Under a provision in the BIA Manual, the BIA is required to contract under the Buy Indian Act (in cases where a tribe has not invoked the Indian Self-Determination Act) unless an Indian firm is not available or a waiver is granted by the Assistant Secretary for Indian Affairs. Although the Buy Indian Act authority had not been used extensively until 1963, the BIA now contracts extensively with Indian organizations. In 1990, total contracts awarded under the Buy Indian Act were equal to $45.7 million. This represented 44 percent of all BIA commercial contracts. Most of the Buy Indian Act contract dollars are for the construction of roads and bridges and the others are for a variety of services ranging from architectural and engineering design to trash collection.

The Administration has not had adequate time to review the proposed legislation. We will provide the Committee with a full report on the proposed bill within the next few weeks.

PREPARED STATEMENT OF GEORGE BUZZARD, ASSOCIATE DIRECTOR, OFFICE OF ADMINISTRATION AND MANAGEMENT, INDIAN HEALTH SERVICE

Good afternoon. I am Mr. George Buzzard, Associate Director, Office of Administration and Management (OAM), of the Indian Health Service (IHS). Accompanying me today is Mr. Mitchell Parks, Supervisory Procurement Analyst, Division of Contracts and Grants Policy, OAM/IHS.

The Indian Health Service (IHS) is the Federal agency charged with administering the principal health program for American Indians and Alaska Natives. The goal of the IHS is to raise the health status of American Indian and Alaska Native people to the highest possible level. Its mission is threefold: (1) to provide or assure the availability of high quality, comprehensive, and accessible health services; (2) to provide increasing opportunities for Indians to manage and operate their own health programs; and (3) to serve as a health advocate for Indian people. In FY 1992 the IHS will continue its mission by providing comprehensive health services to over 1.2 million American Indian and Alaska Native people.

The IHS program is unique in its service to the nation, not only its service to over 500 federally recognized Indian tribes, but in the integration of the many available preventive, curative and rehabilitative activities into a single national, comprehensive, and community oriented health delivery program. IHS preventive services incorporate an unprecedented number of components providing a depth and breadth lacking in any similar program: Nursing, community health representatives, injury control, health education, sanitation facilities, and construction activities. Clinical services often include a wider array of components than are commonly available in any other single program: Prenatal, perinatal, postnatal, medical, surgical, dental, mental health, alcohol and substance abuse, and emergency services. A major management function of the IHS is the integration of diverse services into a single health care delivery program. Integration includes planning, evaluation, policy analysis, administration, coordination and program oversight, and implementation of congressional mandates.

The IHS health care delivery system shares, to some extent, the staffing and economic constraints currently governing our national health care system. The complexity of the IHS program has been compounded further by the growth in the last decade of two major component systems: (1) a Federal health care delivery system, administered by Federal personnel, and (2) a Tribal health care delivery system, administered by tribes and tribal organizations. Both systems include health care services provided directly by IHS or tribal facilities and by contract with almost 1,000 providers. In addition, through contractual arrangements with IHS, together with funds from other sources, various health care and referral services are provided to Indian people in urban settings through 33 urban Indian health programs.

The IHS resource levels have grown significantly, with commensurate reductions in morbidity and mortality for Indian people. Since FY 1983 alone, the IHS total health services program level has increased from $704 million to $1,640 million, a $936 million increase (133 percent). During the same period, the number of full time equivalent staff has grown from 10,309 to 14,425, an increase of 4,116 (40 percent).

In FY 1991 $702.5 million of these resources were placed under contracts to tribes, tribal organizations and commercial contractors, including contractors qualifying under the terms and conditions of IHS Buy Indian Policy. In addition, $188.2 million in goods and services was purchased by IHS using small purchases authorities (purchases under $25,000). This equates to 54 percent of today's resources that were placed under Federal acquisition agreements including, but not limited to, Buy Indian Act and Indian Self-Determination and Education Assistance Act agreements, for the delivery of health services to American Indians and Alaska Native people in FY 1991. A cursory review of current year contract data shows that IHS is expected to meet similar totals for all of FY 1992.

The IHS continues to support the principles of the "Buy Indian Act," but because the IHS is an agency whose primary mission is to provide or assure high quality and timely health care to Indian People, it is imperative that we maintain flexibility where, at times, Indian preference in procurement must be superseded by effective health services delivery. Unfortunately, Mr. Chairman, the Administration has not had time to formulate its position on the draft legislation, but we will be providing you our comments within the next few weeks.

PREPARED STATEMENT OF EDWARD M. DANKS, PRESIDENT, NATIONAL INDIAN CONTRACTOR'S ASSOCIATION

Good afternoon, on behalf of the National Indian Contractor's Association I thank you for providing us an opportunity to comment on the proposed legislation before us. In our lives, this is a significant piece of legislation. As we review this proposed legislation, we are very enthused and support it wholeheartedly. We view the "Indian Business Opportunity Enhancement Act" as an expression of good faith on the part of the United States in dealing with the Native American Business Community. We especially want to express our gratitude to those people responsible for

drafting this legislation. It is obvious that they have listened to our concerns, over the years, and have come forth with legislation that makes sense, is balanced, and builds integrity in the process of Indian Business Contracting with the U.S. Government.

Given our support for this bill, we would like to comment on several of the features that we think are especially significant. First of all, the definition of an "Indian Preference Enterprise" is very well done and should meet the needs of all Indian businesses. Allowing joint ventures is realistic and necessary. All to often we have seen an effort to structure a joint venture that has taken the form of a "front" situation. By making joint ventures legal, providing guidance was to what constitutes an acceptable joint venture, and providing oversight/review of the operation of the joint venture is on target. When contracting for large projects, joint ventures often make the most sense.

Secondly, we applaud the creation of the Office of Indian Business Utilization within the Department of the Interior. Creation of this office is long overdue. We have frequently been frustrated in that we have not had a direct office that we can address our concerns. Our Senators and Congressmen have born the brunt of our frustration. If this office is given the horsepower to carry out its mission, we see it as a necessary and vital component of this entire legislation.

Thirdly, the Indian Enterprise Bonding Demonstration Program is a very positive feature of this legislation. I believe that I would be correct is stating that the single biggest factor contributing to the emergence of "fronts" in Indian contracting is due to the inability for legitimate Indian contractors in securing surety bonding. The provisions identified in this legislation that may be made available, in connection with the Indian Enterprise Bonding Demonstration Program, are extremely valuable tools. Tools such as advance payments for identified direct project costs, Government furnished materials and appropriate technical assistance are necessary risk management resources.

Fourth, under the prompt payment provisions of this legislation is included a special provision for dispute resolution, consistent with the purposes of P.L. 101-552, the administrative dispute resolution act. Without any reservation, I must comment that this provision is an extremely positive and vital piece of this legislation. I know of many Indian contractors who have had to resort to the Board of Contract Appeals or, the U.S. Claims Court to resolve legitimate differences with the Bureau of Indian Affairs. This process is time consuming, frequently taking two or three years to complete. It is very expensive. It contributes to the reluctance of surety companies to write bonds to Indian contractors. The process frequently ends up bankrupting the firm involved in the dispute. We have several Indian businesses who have suffered severe financial disasters primarily due to the inability to resolve disputes with the Government in a timely fashion. We are very happy to this provision in the bill.

In closing I want to thank you for inviting our comments. The National Indian Contractor's Association, stands in support of this legislation and commend those making this effort to enhance Indian business opportunities.

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the National Center
for American Indian Enterprise Development

Testimony of

Steven L.A. Stallings, President
National Center for American Indian Enterprise Development

Indian Business Enhancement Act --
Legislation to Amend the Buy Indian Act

Select Committee on Indian Affairs
Russell Senate Office Building
Room 485

July 2, 1992

Members of the Select Committee, thank you for this invitation to comment on the one piece of legislation in front of the Congress during this session, which can have more immediate impact on the lives of American Indians than any other piece of current legislation.

A. INTRODUCTION:

On the Quincentennial of Columbus's arrival on this continent, we find ourselves very much at a critical juncture. American Indians are people whose cultures have survived and grown in many ways. We are a people whose values, medicines, forms of government, science and art have been shared throughout the world. We have been recognized for our place in history. Still, like peoples everywhere, we find ourselves living in a rapidly changing world. We are part of a transition to a globalized society and we ask ourselves if we are well positioned for this evolution. Can we continue to retain the core of our culture and still be a viable part of a developing global economy? Will our values and contributions find new recognition and new currency in the future? And will our children grow to recall the ways of their grandparents with pride as they walk and work in the new world order?

For us and for our people it is a question of whether or not we will survive for another 500 years. Can we be a viable part of this nation's economy during the next decade and beyond the

next generation? If we can create businesses and engage in viable enterprises which retain our values, while functioning in this rapidly changing economic environment, we will not only contribute to the redefinition of our peoples' self-sufficiency and culture, but we will be enriching the larger community and taking our future place. Consequently, it is imperative that work of growing business enterprises and securing opportunities which create jobs must continue and be expanded.

B. SITUATIONAL ANALYSIS

1. The State of the Indian Economy

By virtually everymeasure, Indian people are the poorest of America's citizens. We deplore reciting the negative statistics--the high rates of suicide, poverty, lack of education, inadequate housing, low incomes, malnutrition, alcoholism, and poor health among American Indians far exceed those of any other group in the United States. Indians have the shortest average lifespan of all Americans. While today's media has headlines about unemployment rates rising to 8 or 9 percent; many Indian communities and reservations have not had unemployment rates under 50% in this century--yet these situations receive little coverage. Figure 1 depicts the poor quality of life experienced by Native Americans in 1990.

Rather than discuss this negative situation further, we prefer to outline our analysis of one major cause of this problem and offer a solution.

Urban, rural, and reservation Indian communities in the United States are characterized by low economic activity with little Indian participation in local economic opportunities. This lack of meaningful Indian participation in local economic growth and development translates directly into high unemployment, underemployment, and other socioeconomic problems for Indian communities as "economic leakage" from Indians to non-Indians takes place.

Figure 1

Selected Demographics of Indian Country

Characteristic	American Indian population	Total United States population
Under 29 years of age	63%	53%
Single-parent families	23%	14%
4 or more years high school (only 43% of Indians have completed high school)	56%	67%
4 or more years of college	8%	16%
Population living in poverty (45% of reservation families live in poverty)	28%	13%
Median family income	$13,680	$19,920
Reservation housing:		
No telephones	56%	--
No plumbing	24%	--
No indoor toilets	21%	6%
No electricity	16%	--

Source: U.S. Bureau of Census, 1990

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At one time, Indian Nations had a healthy economy that was strongly intertwined with our culture and traditions through rituals and ceremonies. Although our bond to this continent predates recorded history, Congress finally granted citizenship to our people in June 1924. Until recently, federal government policy denied Indians the opportunity to engage in trade. This restriction differs significantly from any other group of American people. In many cases restricted by treaties to living on reservations, our parents were forbidden the right to engage in business with other than government-appointed "traders". Most Indians grow up in households where family employment derives from government programs; most Indian children know few Indians who work for private enterprises, much less who own one.

Historically having been denied access to entrepreneurship and therefore, having little knowledge of related economic implications, Indians have systematically been excluded from much of the economic transactions that impacts our lives and future generations. At a time when the Indian population is increasing faster than any other sector of America, while non-Indian rural populations are declining, a lack of local involvement in federal contracting presents serious implications for the quality of life for Indian people.

The root problem underlying these conditions is the lack of Indian participation in the economic mainstream of this nation. Non-Indian owned businesses drain Indian communities of any

economic multiplier effect as Indian business transactions gets transferred to non-Indians. On a state by state basis, Indians are still under-represented economically when compared to other minority groups and the general population. The U.S. Department of Commerce recently published this recommendation in its Winter, 1992 issue of "Minority Business Today":

> "The lack of a strong economic base with a thriving entrepreneurial component in many Native American communities has made them overly dependent on programs operated by the government. More private enterprises must be encouraged for Native Americans to gain expanded work opportunities and establish an economic base for further development. What is needed is an economic and business development strategy that will overcome supply and demand problems, continue achievements already made in entrepreneurial growth, and help Native Americans move toward self-sufficiency."

The result is dependent economies subsidized by public transfer payments. According to the 1987 Survey of Minority-owned Enterprises (Figure 2), the number and gross receipts of American Indian businesses, are far behind other minority groups. Since Indians represent 1% of the minority population, but earn only 1.1% of the revenue, they lag even further. Start-up and existing businesses need experienced management, technical support, financial resources and contract opportunities, to survive and expand.

Figure 2

Comparison of Minority Business Ownership and Sales

Minority	Number of Firms	1987 Sales Receipts
Hispanic	422,373	$24,731,600,000
Black	424,165	$19,762,876,000
Asian	355,165	$33,126,000,000
American Indian/Alaskan	21,380	$911,000,000

Source: U.S. Bureau of Census, 1987

An analysis of the above data indicates American Indian business ownership comprises only 1.7% of all minority businesses in the United States. And American Indian gross receipts are less than 1.1% of total minority businesses receipts. Therefore, just to be on parity on a per capita basis with other minority firms, a 159% increase in Indian business ownership and a 200% increase in Indian business revenues are needed. The future impact is ominous as American Indian business ownership has increased only 35% since 1982, compared with an average increase of 55% for other minority groups.

Further, American Indian communities are characterized by stagnant economies, inadequate human services, and underdeveloped capabilities to promote sustained business and economic development on their own. Typical indicators of economic stagnation include:

- high unemployment and low labor force participation rates;
- high degree of economic leakage and a low multiplier effect rate;
- limited managerial talents for directing local enterprises;

- lack of competencies in ways of obtaining private sector technical and financial involvement; and
- insufficient local market opportunities to promote economic development projects.

The most fundamental distinction that sets Indians apart from other U.S. minority groups is our historic existence as self-governing peoples, whose nationhood preceded that of the United States. The U.S. has long acknowledged a special "government-to-government" relationship with recognized Indian tribes and bands and with Alaskan Native Villages. Generally known as the federal trust relationship, this means that the U.S., in return for vast tracts of Indian lands, assumed contractual and statutory responsibilities to protect remaining Indian lands and to promote the health, welfare and education of the tribal occupants. In practice, the federal government, as trustee, has subjected the tribes to bewildering policy switches, often without their consent, as new theories have caught the fancy of Washington officialdom.

While, statistics of health, education, unemployment rates and income levels continue to show Indians as disadvantaged as compared to the general population, in the 1980s, Federal government policies led to budget cuts for social and welfare services on the reservations. The Indian population is now increasing faster than any other group in America. Our pride in our tribal heritage has survived despite government efforts to discourage us. We aspire to replace departing rural non-Indian

entrepreneurs with strong new Indian businesses. We aspire to restore native economies and contribute to growth of our local communities.

American Indians belong to many culturally and geographically distinct tribes. Members of some 600 tribes, bands, villages and rancherias live on some 320 reservations, trust lands or rural Indian lands. Over $500 million dollars is contracted out in these communities each year of the form of federal procurement, little of it going to American Indians.

2. **The Demographics of the Indian Economy**

Indian reservations, in particular, tend to have underdeveloped economies and high unemployment rates. Although some tribes have been able to develop businesses on their own and have lured others to the reservation by offering tax incentives and the availability of non-unionized labor, in general, Indian attempts at economic development have met with limited success.

Consequently, and for a number of reasons mentioned, economic progress has been slow on the reservations. Skilled management has not always been available; language and cultural conflicts between non-Indians and Indians have proved a stumbling block; the distance between reservations and major markets for goods is discouraging to potential investors.

The lack of progress, however, is not to suggest the impossibility of reservation economic development. Success does

exist in many Indian communities. In fact, tribes have successfully fostered development and attracted outside business with much success. Nearly a third of the Indians employed on reservations are in industrial occupations or construction trades. Resource availability, in particular, allows some reservations to further develop their economies, and to play a major role in their future economic well-being.

The 25,000 Indian firms nationwide are engaged in a broad range of industries, including: 13% Construction; 4% Manufacturing; 4% Transportation and Utilities; 2% Wholesale Trade; 15% Retail Trade; 3% Finance, Insurance and Real Estate; 36% Selected Services; 17% Agriculture and 6% other industries. These businesses can be a great source of supplies and services, as well as employment opportunities for their communities.

Many Indian firms build their businesses around the above described reservation development opportunities and economic assets. While American Indians represent 0.8% of the U.S. population, we own only 0.16% of the nation's firms. Indian businesses are found throughout Indian America, although some concentration is evident from the profile described in Figure 3.

Figure 3

1987 American Indian Owned Firms
15 Top Ranked States

Rank	State	Indian Firms	%/Pop.	%/Firms
1	Alaska	4,006	15.6	8.21
2	California	3,280	0.8	0.18
3	Oklahoma	2,051	8.0	0.92
4	N. Carolina	1,758	1.2	0.53
5	N. Mexico	1,258	8.9	1.53
6	Texas	931	0.4	0.09
7	Arizona	872	5.6	0.45
8	Washington	682	1.7	0.24
9	New York	445	0.3	0.05
10	Montana	405	6.0	0.64
11	Colorado	351	0.8	0.13
12	Florida	349	0.3	0.05
13	Minnesota	340	1.1	0.12
14	Wisconsin	307	0.8	0.13
15	Michigan	305	0.6	0.07

Note: American Indians represent 0.8% of the U.S. Population, but own only 0.16% of all U.S. firms.

When considered collectively, various factors identify both positive and negative development elements. Some conditions on Indian reservations affecting business and economic development are shown in Figure 4.

Figure 4

Factors on Indian Reservations Affecting Business Development

Positive Factors	Negative Factors
Abundant labor force	Low-skilled labor force
Strong work ethic	Geographic isolation
Proximity to market	Inadequate rail & air service
Available natural resources	Low capital resources
Non-transient employees, deep community roots	High rate of controlled substance abuse
Cultural integrity	Insufficient infrastructure
Low cost labor	

It is important to note that some tribes have progressed to the point where they have overcome almost all negative conditions. When these factors are looked at negatively, Indian reservations and their people could be perceived as unacceptable business partners. On the other hand, when these factors are viewed positively, Indian reservations and their people can be perceived as highly acceptable business partners with a vast set of economic opportunities for successful business development. Many of the situational factors which make Indian tribes

unacceptable business partners can be looked upon as business strengths. For instance, geographical isolation and low labor-force skill levels can lead to a highly-trainable, stable and loyal work force. Reservation Indians are a dedicated work force, committed to surviving and prospering on their tribal lands.

Many opportunities for business relationships exist on Indian reservations for those willing to invest the time to get to know and understand Indian reservations and their cultures. The Indian Business Enhancement Act and its amendments to the Buy Indian Act can help to make this a reality.

C. COMMENTS ON THE LEGISLATION TO AMEND THE BUY INDIAN ACT:

The Select Committee on Indian Affairs has before it a legislative proposal which can have an immediate impact on the economic lives of American Indians today. No other proposal considered by the Senate Select Committee during this session has the potential to provide real opportunities to existing American Indian owned enterprises, who are prepared now, to contribute to the economic well being of their communities.

Full and creative implementation of the Buy Indian Act will directly target a major portion of the estimated annual $500+ million in procurement acquisitions made by various agencies of

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the Federal government for the benefit Indians. As a result, thousands of Indian jobs will start up and new sources of revenue are created.

The failure of the Buy Indian Act has not come as the result of "fronts" or the lack of ability to perform on the part of the estimated 3000 Indian construction contractors. Rather, it has been the failure of past Administrations to embrace the concept of "Buy American Indian" as an important economic development strategy. The historical inability of BIA, IHS and HUD contracting officers to understand the importance of doing business with an American Indian Preference Enterprise (IPE) is a legacy of failure.

It's proven itself out. Doing business with American Indian owned companies creates Indian jobs. In on-reservation tribal and individual Indian owned enterprises, the labor force is 92% American Indian, in off-reservation Indian owned businesses, over 60% of the employees are American Indian (source- Study on the financing needs of American Indians, UIDA, Los Angeles 1989).

Prior to examining the provisions of the amendments, we feel it is important to cite the major areas of concern in the track record of the Buy Indian Act.

- Too much latitude has been given to the bureaucracy to circumvent the application of the Act and to direct procurement elsewhere.
- Certification and enforcement of preferences has been neglected and avoided by the contracting officers of the BIA, IHS and HUD.
- The current system of self-certification lacks a due diligence process upon award of a contract to insure only eligible Indian companies get the preference.
- The unwillingness of agencies to "break-out" large procurements into sizeable jobs excludes many capable Indian owned enterprises due to bonding requirements.
- Non-Indian prime contractors must be required to submit an Indian preference subcontract plan at bid time, naming Indian subcontractors and the subcontract price to prevent "bid shopping" and circumvention of the intent of Buy Indian.

The inclusion of an Office of Indian Business Utilization and the Indian Enterprise Data Center are excellent mechanisms to provide for accountability for the Act and are fully supported by our organization.

Section 3. BUY INDIAN ACT AMENDMENTS.

Due to historical attempts by the Department of Interior to exclude the BIA facilities budget from the provisions of the Buy Indian Act and the efforts of the IHS and HUD to consider Buy Indian as just a "Bureau problem", amend the language to be specific about what procurements it includes and to what agencies it applies (italics represent recommended language).

Preference in Contracts and Grants, Sec. 23.(a)(1)(A):

"(A) in the award of the grant or contract including (but not limited to) *housing, roads and facilities construction, office supplies* or printing, provide a preference to Indian preference enterprises that provide the greatest economic impact on Indian reservations: and

Prime contractors can circumvent the subcontracting requirement without an adequate subcontract plan. Require a specific subcontract plan at time of bid.

Sec. 23.(a)(3)(B):

"(B)" no less than 70 percent of the subcontract dollars the bidder will award under the contract will be awarded to reservation-based, Indian-owned sub-contractors *as evidenced by a subcontract plan which specifically cites the Indian subcontractor and the subcontract price*; and

Indian talent in construction exists as demonstrated by skill data, require that the Plan show that Indian supervisory personnel cannot be found.

Sec. 23.(a)(5)(A):

"(A)" use Indian workers for all positions except for (i) essential supervisory employees on construction contracts *where an American Indian cannot be found*, and (ii) permanent employees on non-construction contracts; and

Federal agencies require specific mention of the procurement items to avoid elimination of contract opportunities.

Sec. 23.(a)(6)(D)(iii):

"(iii) Funds obligated for contracts entered into with the Department of the Interior for such fiscal year for construction, *including facilities, housing construction, Indian roads and bridges.*

Provide for the specific listing of the effected agencies.

Sec. 23.(a)(8): add new language Subsection (E) as follows.

"(E) This section will apply to the Indian contracting budgets of IHS, HUD/OIP and ANA.

The language should be specific as to negotiated price with the sole responding Indian Preference Enterprise (IPE) only.

Sec. 23.(a)(9)(B):

"(B) If only one offer is received under a competition restricted to Indian preference enterprises, the procuring agency may negotiate an award of the contract at a fair and reasonable price *to the offering IPE.*

In the case where two or more IPE's cannot be found, require agencies to seek IPE's from other preference programs.

Sec. 23.(a)(10)(A):

"(10)(A) If it is not feasible for a Federal agency to limit the competition for the award of a contract under the authority of paragraph (9), the agency shall *first look to other preferences such as the SBA 8(a) Program to provide the contract to an IPE prior to actions to* award the contract after full and open competition...

Todays' business environment and cost escalations are such that contracts for specific jobs require increasing amounts upward.

Sec. 23.(a)(13)(B)(i-ii):

"(i) all construction contracts estimated a cost less than ~~$1,000,000~~ $3,000,0000,

"(ii) all design contracts estimated to cost less than ~~$100,000~~ $500,000, and

The self certification process will not ensure compliance. Amend the language to include a due diligence requirement of contracting personnel prior to contract award.

Sec. 23.(a)(13)(C): add new language Subsection (iii) as.

(iii) Prior to actual award of a contract the secretary will verify the accuracy of the successful bidders preference affidavit by conducting an on-site visit to the enterprise and other due diligence related to the affidavit.

The joint venture arrangement will only truly benefit reservations when the Managing Partner of the JV is an IPE.

Sec. 23.(a)(13)(D)(ii)(I-II): Add subsection III.

"(I) owns and controls at least 51 percent of the joint venture and receives at least 51 percent of the profits and the joint venture, ~~and~~

"(II) has successfully completed, independently, at least one contract for each contract awarded to the joint venture for which a preference is provided under this section, *and*

"(III) serves as the general partner for managing the joint ventures.

There is no demonstrated need or basis for differentiating between ownership interests of Indian construction companies and other industries for IPEs.

Sec. 23.(b)(1)(A)(ii):

"(ii) is entirely owned by one or more Indian tribes, which receive ~~100~~ 51% percent of the profits of the enterprises, or

IPEs which can demonstrate cause to protest the status of another IPE must be insured.

Sec. 23.(c)(2): add new language subsection (D).

"(D) an Indian Preference eligible Enterprise which bid on the contract.

To ensure on-going compliance the Office of Indian Business Utilization (OIBU) should be required to conduct an investigation of each award rather than a random review.

Sec. 23.(d)(3)(C):

"(C) conduct ~~**periodic random**~~ investigations of Indian preference enterprises *for successful contract bids* to ensure that those enterprises satisfy the criteria under paragraph (1) of this subsection, and are eligible for preference;

To increase awards to IPEs advance contract data should be retrieved by the OIBU for forwarding to the Indian Enterprise Data Center for dissemination to IPEs.

Sec. 23.(d)(3): add subsection (J).

"(J) collect advance information on procurement opportunities from the BIA, HUD, and IHS and forward same to Indian Enterprises Data Center for dissemination.

The BIA must be required to relinquish the facilities budget to the provisions of Buy Indian, specifically include languages which requires contracting through the Act.

Section 7.(a) FEDERAL FACILITIES:

> *(a) LOCATION OF FACILITIES. - The Bureau of Indian Affairs and the Indian Health Service shall, in all matters connected with establishing or developing facilities 1 to provide services or assistance to Indians, give priority 2 consideration to locating such facilities on Indian reservation lands and constructed under the preference provisions of this Act.*

An Indian Enterprise Data Center should go beyond mere data collection and assist the OIBU to verify IPE documentation and to match procurement opportunities to the capabilities of IPEs.

Section 8. DATABASE:

(5) Verify preference information and documentation submitted to the Data Center and report any discrepancies to the OIBU.

(6) Advance procurement information for the purposes of bid matching contract opportunities to contractor capabilities.

(5) (7) whatever addition information the Secretary deems relevent.

TESTIMONY OF

VERNON MESTES, VICE CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

THE INDIAN BUSINESS ENHANCEMENT ACT

July 2, 1992

Mr. Chairman and members of the Select Committee, I would like to introduce myself. My name is Vernon Mestes. As Vice-Chairman of the Cheyenne River Sioux Tribe, it is a pleasure to have the opportunity to appear before you today and present our concerns on the Indian Business Enhancement Act.

My statements will reflect issues that are of great concern to our Tribe. In addition to serving as the Vice Chairman, I serve as a member of the Cheyenne River Sioux Tribal Employment Rights Commission or TERO. Our TERO Ordinance uses tribal authority to impose Indian preference requirements that are very similar to those proposed in the Indian Business Enhancement Act. Those requirements apply to any entity doing business on our Reservation. As a result, I have had extensive experience as a commissioner in reviewing applications for Indian preference certification, in sitting as a judge in hearings to determine if an employer has violated our Ordinance, and in reviewing compliance plans to determine if they meet our requirements. My comments on the bill therefore focus on these areas and on the places where the Federal implementation of Indian preference touches our Tribe's Indian preference program.

As a general statement, our experience has been that Indian preference, if properly implemented, can be a very valuable tool for promoting Indian employment and Indian economic development. Secondly, I believe the proposed bill is a good piece of legislation that will further promote Indian employment and economic development, in conjunction with the Tribe's efforts. In regard to specific aspects of the bill, in the areas of certification and monitoring, tribal participation is a must. Our Tribe has taken great

strides in enforcing Indian preference in contracting, subcontracting, employment and training. Certification of Indian preference firms has played a large part of this forward progress. Also the monitoring of contracts to ensure Indian preference has also progressed with great success. One tool that has been very instrumental has been the use of a compliance plan. The development of this compliance plan has enabled the Tribe to continue to work with contractors and enforce Indian preference.

The Cheyenne River Sioux Tribe's Tribal Employment Rights Office ("TERO") has worked with the many aspects of certification of Indian preference. During this time the TERO office has found the need for a strong certification process both by the Tribe and by the contract letting agency. The certification process being enforced by the TERO office has found that persons interested in abusing Indian preference will structure firms to get around most Indian preference criteria.

With the self-certification process presently being used by the Bureau of Indian Affairs on construction projects located on the Cheyenne River Sioux Reservation, there is no in-depth study of applications submitted or Indian preference certification. This opens up opportunities for those persons interested in abusing Indian preference. Many times this abuse of self-certification causes the delay of contract awarding due to protests that are filed against the legitimacy of Indian preference. The TERO office is aware of contracts that have been delayed due to protests related to the self-certification process. With a limited construction season on the Cheyenne River Sioux Reservation in central South Dakota, any delay in contract awarding does have an impact on economic development of the Reservation.

Our experience is that the Federal agencies generally do not do a good job of pre-certifying. The contracting officers have too many other responsibilities and do not conduct the kind of in-depth analysis of a certification application that an agency that devotes full time to Indian preference, such as the TERO, does. The language that permits the tribes to do pre-certification while limiting the Federal agencies to a self-certification process is a good balance. It will provide adequate review while keeping project delays to a minimum. The need for the contracting officer to give great weight to the Tribe's decision needs to be stressed to the utmost. Because the contract awarding agencies' self-certification process are often lax, there is the need to give more weight to the Tribe's pre-certification decision. This approach to certification would be more in line with keeping Indian preference at the forefront and should be implemented with contract letting agencies.

Presently the TERO office monitors contracts on the Cheyenne River Sioux Reservation to ensure that the contractor complied with the Indian preference require-

ments under the TERO Ordinance. This monitoring includes a wide range of areas, including certification, contracting, subcontracting, employment, training, wage & hours, etc. With the monitoring being done by the Tribe's TERO office, we have had great success with enforcing Indian preference with contracts. The Tribe's involvement in the contracts has been very beneficial to the economic development on the Cheyenne River Sioux Reservation.

The monitoring process presently being used by the TERO office has been effective and continues to progress. Because the projects let for bid are on the Reservation, the Tribe has more at stake than some representative from the contracting agency who oversees projects. This being the case, the language in the bill to allow the Tribe to request by resolution, to serve as the monitors for the Federal Agency is beneficial. The tribes will continue to monitor and enforce their own ordinances. But this provision, also allows the Tribe to serve as the on-site monitor for compliance with the Federal requirements. In the past, there have been projects on which there has been two different Indian preference monitors -- one federal and one tribal, which has been confusing to the contractor. Permitting the Tribe to wear both monitoring hats will avoid this confusion. The language in the bill preserving the Tribe's independent authority protects tribal sovereignty.

Presently the Cheyenne River Sioux Tribe Tribal Employment Rights Ordinance ("TERO") requires the awardee to submit an acceptable compliance plan to address Indian preference prior to any work being done. This compliance plan has been a very useful tool to get the contract awardee to comply with addressing Indian preference with workers, suppliers, and subcontractors. The language on compliance plans in the bill is similar to ours and it should be effective. The language concerning Indian workers being used in all positions except essential supervisory employee on construction contracts, and permanent employees on non-construction contracts is being enforced under TERO with great success. This language will continue to strengthen the enforcement of Indian preference in the area of employment, which is a major concern for our Tribe.

Further, the use of Indian subcontractors and suppliers for all such purposes so long as they are technically qualified and available at a reasonable price, is also being enforced with success under TERO. With the need for opening opportunities for Indian preference subcontractors and suppliers, this enforcement has benefitted both the Tribe and the Indian preference program. Again, the language in the bill is similar to the language we use and we think it will be effective.

Indian preference in employment and subcontracting has had a positive impact on the Reservation. Indian preference has opened opportunities that would not have

otherwise been available to Indians in employment and subcontracting. The compliance plan required by the TERO office has been instrumental in making these opportunities available, and has been proven to work effectively. The requirement of a compliance plan would be beneficial both to the Tribe and contract awarding agency by ensuring that Indian preference has been enforced.

In conclusion, we think the bill establishes a solid and comprehensive Federally imposed Indian preference program. It is based on approaches that tribes such as ours have shown to be effective. We were disappointed when President Bush vetoed a similar bill in 1990, but we think this bill is an improvement on the vetoed one. We urge the Committee to enact it and we hope that this one will quickly become law.

Thank you again for the opportunity to testify.

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TESTIMONY BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON THE
"INDIAN BUSINESS ENTERPRISE ENHANCEMENT ACT"

PRESENTED BY
MR. EDWARD H. HALL, PRESIDENT
TRANSPORTATION ASSOCIATES, INC.
ALBUQUERQUE, NEW MEXICO

Mr. Chairman and members of the Committee, it is an honor to appear before you today to present testimony on the "Indian Business Enterprise Enhancement Act." My name is Edward Hall and I am President of Transportation Associates, Inc., an Indian owned and controlled engineering consulting, transportation planning, and construction management firm. I have many years of experience in administering the Indian Reservation Roads Program, from the reservation to the Washington D.C. level, within the Bureau of Indian Affairs, and have been involved with the application of the Buy Indian Act to road construction since the mid 60's. I am a firm believer in the need for special legislation to assist Indians develop as contractors and such legislation will have a beneficial impact on reservation economies. My purpose today is to express the need for clear legislative guidelines for providing Indian preference in contracting and to comment on the proposed "Indian Business Enterprise Enhancement Act."

My involvement with Indian preference contracting goes back to 1968 when I was the Bureau of Indian Affairs' Agency Road Engineer at the Turtle Mountain Indian Reservation in North Dakota. In that capacity I was able to contract with a few local Indian owned contractors to perform gravel crushing and other road construction related activities. I relied on the Buy Indian Act as authority for those actions and was supported by the Agency Superintendent in that initiative. In 1977, I left the federal employment for a period to enter private enterprise and manage the Standing Rock Enterprises, a construction business owned by the Standing Rock Sioux Tribe. This business was thriving and successful in manufacturing pre-fabricated houses and performing road construction within the Standing Rock Sioux Indian Reservation in North and South Dakota. Our contractual relationship with the federal government was based upon authority contained in the Buy Indian Act. However, in 1978, the United States District Court for the Eastern District of Oklahoma

decided Glover v. Andrus and ruled that the Buy Indian Act did not apply to construction activity. Thus, Standing Rock Enterprises was forced to compete on the open construction market without the benefit of Indian preference and was forced to close its doors shortly after the Glover decision. The primary reason Standing Rock Enterprises failed was our inability to obtain surety bonding. The Buy Indian Act contracts we obtained and successfully completed did not require bonding. I am sure there were many other Indian contracting firms that experienced the same disappointment.

I went back to work for the Bureau of Indian Affairs in 1979 as the Chief, Branch of Engineering, Division of Transportation. In tnat capacity, I strongly urged the incorporation of Buy Indian Act authority in federal highway legislation. Congress reinstated the use of Buy Indian Act authority in road construction in the Surface Transportation Assistance Act of 1982 ("STAA"). The next few years represented the high water mark of Indian enthusiasm and interest in becoming road construction contractors. Many legitimate and determined Indian people attempted to develop successful road construction firms. However, the inability to obtain technical assistance, surety bonding and working capitol forced many of these businesses to go out of business or become tempted into joint ventures for the sake of survival. Since the mid 80's, the lack of regulations allowed the Buy Indian program became a fertile ground for fraud, corruption and abuse. That condition became apparent to this Committee through your Special Committee on Investigation Report issued in 1989.

Today there are technical assistance resources provided by the Department of Commerce through their Indian Business Development Centers, the Small Business Administration 8(a) program, and state Disadvantage Business Enterprise Programs. However, until innovative and effective programs that address the bonding and financing needs of construction contractors are created, Indian owned firms will continue to be excluded from federal contracting opportunities.

Our firm conducted a study of Indian contractors for the BIA in the later part of last year. I am pleased to see that many of the recommendations of that report are included in this bill. I submit a draft copy of that report for the record.

There are several factors that have hindered the development of legitimate Indian contractors. First, since the Buy Indian Act was passed in 1910, there have been no final regulations to provide general guidance to the contracting officers or contractors that would form the basis of a secure business climate. The program has always been managed based upon policies and draft regulations that were and are subject to overnight change. This undefined regulatory and policy structure made the Buy Indian Program itself high risk for potential lenders and

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investors. Thus the millions of dollars of contracting opportunity attracted firms interested in short term, high profit, and high risk ventures.

I would like to make the following specific comments.

1. Proposed Section 23(a)(13)(B)(i), located on line 4 of page 13, should authorize set-aside construction contracts in amounts up to $2,000,00, rather than $1,000,000.

2. Proposed Section 23(a)(13)(B)(ii), located on line 6 of page 13, should authorize set-aside design contracts in amounts up to $200,000, rather than $100,000.

3. Proposed Section 13(D)(i) appears to authorize joint ventures to continue without any limits. Some time limits should be specified for the Indian partner to graduate from the joint venture. There should also be a limit on the number of joint ventures and Indian contractor can participate in.

4. The Indian Enterprise Data Center proposed in Section 8 should also be the focal point gathering and distributing information relative to Federal contracts under the Buy Indian Act. This information should include, but not be limited to, solicitations, bid results, new policies and regulations, and other relative news items.

5. Proposed Section 23(a)(8)(D), located on line 20 of page 9, appears to limit the application of this legislation to the Five Civilized Tribes and members of the Osage tribe within the state of Oklahoma. We recommend that the authority created by this legislation apply to all Federally recognized tribes and their members in the state of Oklahoma and to all funds appropriated for the benefit of Indians.

6. Proposed Section (d)(1), located on line 24 of page 17, should specify that Indian preference applies to all personnel employed in the Office of Indian Business Utilization.

In closing, I want to again thank you for the opportunity to be here today to support the "Indian Business Enterprise Enhancement Act.". I congratulate those involved in developing this legislation for a job well done. I know the development of this legislation has taken a lot of hard work by dedicated people. I also realize that it is difficult to write legislation that pleases all interested concerns. I believe that legislation must be enacted to assure that Indian preference is implemented in a manner that encourages Indian business development as intended by Congress.

Edward H Hall

Edward H. Hall
President

Date_____

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Statement to Senate regarding
"Buy Indian Act" Bill amendments

WRITTEN STATEMENT OF MYRA DEMONTIGNY
MANAGER OF NORTHWEST PIPING, INC.

Northwest Piping, Inc., hereafter referred to as N.P.I., is a 100% Indian owned and controlled contractor operating since 1970. In 1984, it expanded into road construction bidding on projects subject to the "Buy Indian Act". Eventually 90% of all contracts entered into by N.P.I. were heavy highway or road construction projects for the Bureau of Indian Affairs, hereafter referred to as the B.I.A.

In the past two years, our primary contracts were road construction projects with the B.I.A. and our company came dangerously close to insolvency due to these projects. For example, on three of our projects, we encountered differing site conditions or changed conditions in which contract modifications should have been implemented. The modifications were not incorporated into the contracts.

For each one of these differing site condition or changed condition situations, N.P.I. promptly placed the appropriate contracting officer on notice. Invariably, the contracting officer would respond in either a one sentence letter or a one paragraph letter denying the existence of the differing site condition or the changed circumstance condition.

The Bureau of Indian Affairs responses for all three projects forced us into filing claims with the Bureau of Indian Affairs which summarily were denied. Once again, the denial letters were extremely brief. As an example, on a project in which we encountered rock, we filed a 100 page claim with supporting documentation which was denied in a three paragraph letter by the B.I.A. contracting officer.

Since the claim letters we submitted were denied, we then had to turn to the Board of Contract Appeals which is very costly and time consuming. The legal fees for these projects and the claims filed were quite expensive. Another problem with being forced to go to the Board of Contract Appeals is the delay in obtaining a resolution of the disputes.

In expounding on the delay, I'll give you examples for all three of our claims. On one project, we encountered the differing site condition in October 1990 but only had the dispute settled through negotiation on February 28 1992. On that date, the B.I.A. agreed to pay N.P.I. for the costs

associated with the differing site condition with a payment schedule incorporated into the settlement agreement executed by N.P.I., it's attorney, the B.I.A. and the B.I.A.'s field solicitor. The settlement agreement stated we would receive the final payment by April 28, 1992. To date we still have not received the final payment.

On another of our projects, we encountered the changed circumstance in July 1991, but did not reach a resolution through negotiation until June 1992. The resolution we reached included a monetary payment to N.P.I. We still have not received these monies either.

The third project in which we encountered quite a few differing site conditions is still unresolved. We encountered the differing site conditions in the spring and summer of 1990 and immediately placed the contracting officer on notice. The contracting officer never even responded. We assumed the lack of response was negative and filed a number of claims with The Bureau of Indian Affairs. The contracting officers' responses were incredibly brief. For example, one of our claims concerned the fact that the Bureau of Indian Affairs failed to provide a full time inspector on the project which was required by the contract.

The lack of a full time inspector created many project delays and also cost us a great deal of money. An illustration is the problems we encountered in pouring the concrete for the box culverts needed for the projects. Whenever we were ready to make the pour, we would have to call and locate the B.I.A. inspector and make an appointment for him to be present for the pour. For the majority of the pours, the inspector was late and sometimes the concrete would have to be dumped since it sat in the concrete ready mix truck too long and would have to be wasted since the inspector would not allow us to utilize the concrete. Of course, we still had to pay the vendor for the concrete so it was a total waste of money.

In response to our letter to the B.I.A. contracting officer outlining our claim for project delay expenses and so on for their failure to provide a full time inspector, the contracting officer wrote a one sentence reply stating it was none of our business that an inspector was not available full time. In fact, the contracting officer's responses to all of our claims were basically the same.

Since all of the contracting officer's responses to our claim letters failed to state that it was a final contracting officer's decision and we had the right to appeal to the Board of Contract Appeals, we could not file the appeal. This placed us in limbo for quite a while and we had to repeatedly request a final contracting officer's decision which we finally received one month

ago. N.P.I. also made repeated attempts to try and resolve the matter through negotiation, to no avail. This situation is somewhat ironic since the contracting officer has denied all our claims but yet in a letter accompanied with the last progress pay estimate he approved for the project, he admitted we still had money due us for some of the claims. The logic used by the Bureau of Indian Affairs escapes me.

The Bureau Of Indian Affairs' actions for all three of these project claims has caused us a great deal of hardship. Obviously, when a contracter encounters a differing site condition or a changed condition, the costs soar above what was originally estimated and the contractor shows a loss for the project. The extra costs associated with our claims has placed us in a poor cash flow position since they occurred in the first place and secondly because it takes such a long time to resolve the disputes.

Our poor cash flow position has been exacerbated for another reason. The reason is the extreme delays we have experienced in receiving our regular construction progress pay estimates from The Bureau of Indian Affairs. The Bureau of Indian Affairs has always been slow in paying contractors but the delays have worsened in the past year.

In addition to having to endure cash problems resulting from claims, we were told in September 1991 that we would not be able to receive any payments until after October 22, 1991, due to the B.I.A.'s finance office conversion to a new F.F.S. system. This almost destroyed our business. Some of the payments we were waiting to receive in September and October 1991 were payments due in June of 1991.

We turned to Senator Conrads' office for assistance in receiving the payments due us. Senator Conrads' office was most helpful and managed to have one of our payments sent to us. If not for the Senators' aid and advances from our bank, we would not have survived the crisis.

Payments have still been slow in reaching us. For awhile the B.I.A. was using the excuse that due to their conversion to a new system, the backlog was tremendous and the delays were a result. A prime example is a project we completed on The Rocky Boy Indian Reservation in November 1991 and we still have not received the final payment from the B.I.A. The B.I.A. has offered assorted reasons for their non-payment and claim they result from loss of documents to lack of funds in a particular account. None of the excuses they have given us make any sense.

Another area in dealing with B.I.A. projects we have had a

disturbing experience with is a P.L. 638 contract the B.I.A. entered into with the Turtle Mountain Band Of Chippewa Indians. The tribe drafted the plans and specifications for construction of a school to cost around seven million dollars. The specifications specifically stated that the prime contractor must subcontract 30% of the project to Indian subcontractors. The specifications also was quite clear that the prime contractor must submit a plan listing the Indian subcontractors and the dollar amount of the subcontracts with their bid to illustrate the prime contractors' ability to meet the 30% mandate. The minority preference clause in the specifications also made it clear that whoever the prime listed as a subcontractor must be used to avoid the prime from bid shopping if they were the successful low bidder. Apparently, the tribe had previous experiences in which the prime contractor with a large contract listed Indian subcontractors and never used them but subcontracted the work to non-Indians.

N.F.I. could not bid the school as a prime contractor since we are a small business but we did quote the mechanical to all the prime bidders. The successful low bidder used our mechanical quote to meet the 30% mandate and was ostensibly required to issue a subcontract to us. Instead, the low bidder approached us and told us that they would only issue a subcontract to us if we met a quote they received from a non-Indian contractor. We said no since that was bid shopping but they still had to use us since we were listed on their plan which allowed them to meet the 30% Indian preference requirement. As a result of this confrontation, the low bidder went to the tribe and the tribe then waived the 30% requirement. In this case, a legitimate Indian contractor was denied the ability to perform work on a contract with very specific Indian preference requirements because the tribe failed to follow their own specifications.

This incident really troubled us for one main reason. First, 638 contracts are supposed to benefit Indian contractors in addition to the tribes. In the aforementioned episode, not only did we not benefit, a non-Indian contractor benefited and that was never the purpose of Indian preference requirements.

Indian preference requirements are always listed in all B.I.A. specifications under section H which mandates that Indian prime contractors are supposed to solicit quotes from other Indian subcontractors. This requirement has not been followed from our experience. The other Indian contractors who contract with the B.I.A. regularly never solicit quotes from us. We have never been asked to quote R&D contracting, C&W contracting or Blaze construction. Their failure to contact us is non-compliance of the section H requirements.

[4]

The section H requirements even state that not only must the prime solicit quotes from other Indian contractors but must negotiate with the Indian subcontractor if their quote is higher than quotes received from non-Indian contractors. Our experience with this requirement has also been negative and illustrates to us that the B.I.A. is lax in enforcing their own specifications.

One other area of concern I would like to express is our inability to compete with companies like Blaze construction. Blaze is a large business performing millions of dollars of work per year. Their resources in equipment, financing and bonding is unlimited compared to us. N.P.I. is a small business with gross receipts of three to four million per year. Obviously we cannot compete with a company like Blaze on projects and we do not. Blaze appears to be awarded the majority of road construction contracts for all area B.I.A. offices every year.

One final note I need to mention and that is bonding. Our surety is so skeptical of the B.I.A. that they have recently told us that until the B.I.A. changes, they may not let us bid any more B.I.A. contracts. Our surety came to this conclusion for two reasons. First, the B.I.A.'s slowness in paying and second, the delays in having legitimate claims resolved.

In conclusion, the major problems we have encountered in working for the B.I.A. are delays in payments, delays in claim resolutions, the B.I.A.'s non-compliance with the Indian preference requirements and their allowance of one large contractor to do the lions share of road construction work. My recommendations to alleviate these problems are as follows:

1.) Stricter prompt payment adherence.
2.) Alternative disputes resolution program to avoid forcing the contractor in a claim situation. Additionally, the B.I.A. personnel should be better educated to recognize differing site conditions or changed conditions.
3.) Advance payments to contractors since the B.I.A. is slow in making regular progress pay estimates.
4.) Mandate the B.I.A. to comply with the section H Indian preference requirements in its own contracts or the contracts they enter into with tribes pursuant to P.L. 638.
5.) Restrict projects to small businesses to avoid a company like Blaze from taking the majority of work.

I thank you for giving me this opportunity to share our experiences with the B.I.A. I sincerely hope you find my statement helpful.

National Congress of American Indians

Est. 1944

Statement on:

"Indian Business Opportunities Enhancement Act"
(Draft Bill)

Presented by:

Michael Anderson, NCAI Executive Director

Before:

Senate Select Committee on Indian Affairs

July 2, 1992

Mr. Chairman and Members of the Committee, my name is Michael Anderson and I am Executive Director of the National Congress of American Indians (NCAI). I am here to represent the views of NCAI's 144 Member American Indian and Alaska Tribes. First, NCAI thanks Senator Conrad for taking the lead on proposing draft legislative amendments this year to the "Buy Indian Act". While the original Act was well-intentioned, the potential for the Buy Indian Act and Section 7(b) of the Indian Self-Determination and Education Assistance Act to promote Indian preference in contracting has been seriously under-utilized and also abused due to inherent policy flaws and implementation problems. NCAI welcomes the proposed amendments as a real step toward realizing Congress's intention in passing the original Buy Indian Act, which is to achieve the maximum benefit for Indian employment and business development on or near Indian reservations.

As this Committee knows, the unemployment rate on Indian reservations currently averages 56% with a high of 97%. Outside of the Buy Indian Act, little has been done through legislation to give Indian people the tools to empower themselves through stimulation of their economies. In that regard, NCAI has specifically targeted support for legislation this year to create an Investment Tax Credit and Employment Tax Credit for certain businesses locating on Indian reservations. NCAI strongly recommends passage of amendments to the Buy Indian Act and urges all Committee Members to co-sponsor and support S.2054.

S.2054 is pertinent to amendments to the Buy Indian Act because they both address the goal of spawning economic development in Indian country. The Bush Administration believes that many socio/economic problems in American society today can be remedied by reenforcing family and community values. For Indian people, however, the problem behind our social problems is that economic opportunity is virtually non-existent. Alcoholism, crime and suicide rates all indicate that American Indian people are suffering from a recession which has
existed in Indian country long before it became a problem for greater American society.

The sad fact of the matter is that many tribal economies today depend on federal program dollars. But there are ways that federal program dollars can be utilized to employ Indian people through various initiatives such as construction. In December of 1991, Congress passed the Surface Transportation Efficiency Act which nearly tripled funding for the Indian Reservation Roads program (IRR). These funds which are used for road construction on Indian lands provide an impetus for employing Indian people and benefitting Indian-owned contractors. As the Special Investigations Committee discovered, however, many of the purportedly "Indian-owned" firms have turned out to be front companies.

NCAI specifically supports language which would prevent these non-Indian front firms from siphoning off federal contracting funds from legitimate Indian contractors. NCAI requested during reauthorization of the Surface Transportation Efficiency Act that the issue of front road construction companies be addressed, and even considered whether legitimate Indian-owned contractors would actually fare better were the Buy Indian Act provision not applied to road construction. Rather than doing away with a flawed program, however, NCAI commends this Committee for bringing these amendments to the table.

NCAI believes that the proposed amendments to the Buy Indian Act will do much toward improving implementation of the Act and revitalize the Act itself. NCAI supports the concept of the bill including the following provisions:

1. NCAI strongly supports the precertification language in joint venture projects which have proven susceptible to fronts.

2. NCAI supports weighted preferences for bids of contractors that are located on reservations and that have received at least 50% of the dollar value of their contracts for each of the 2 previous years within 300 miles of the main office.

3. NCAI supports weighted contracts which provide that 70% of the subcontract dollars be funnelled through the contracting process to reservation-based, Indian-owned subcontractors and utilization of Indian people on 70% of the contract.

4. NCAI supports granting the Secretary of Interior the authority to apply the Buy Indian Act to federal agencies outside of Interior with the goal that 5% of Interior contracts being let through Indian preference standards.

5. NCAI supports the bonding demonstration project and asks that the Committee prioritize expansion of such bonding capacity if the demonstration proves successful.

6. NCAI strongly supports the Small Business Set-aside provision of the Act on all contracts below $1 million, which NCAI understands comprises 87% of all BIA contracts.

7. NCAI supports language directing the BIA and IHS to provide a preference for locating various facilities on reservation lands, as has been proposed in legislation introduced by Senator Burdick earlier this year.

NCAI recommends swift passage of these amendments to the Buy Indian Act and believes that the amendments are a good step toward empowering Indian businesses and developing our tribal economies. Thank your for this opportunity to present testimony, Mr. Chairman, and I would be pleased to answer any questions at this time.

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TESTIMONY PRESENTED TO
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON THE
DRAFT "INDIAN BUSINESS ENHANCEMENT ACT"

SUBMITTED BY JOHN WASHAKIE, CHAIRMAN
SHOSHONE TRIBE OF THE WIND RIVER INDIAN RESERVATION

July 15, 1992

Mr. Chairman and members of the Committee, the Shoshone Tribe is pleased to present testimony on the draft "Indian Business Enhancement Act." Indian reservations across the country, and especially the Wind River Indian Reservation, have vastly underdeveloped private enterprise activity. We feel strongly that a direct relationship exists between the reservation's stagnant economy and many social problems. If enacted, this bill would substantially expand the use of Indian preference contracting among federal agencies and represent a much needed first step to directly address the business development needs of Indian owned enterprises and employment of Indian people.

GENERAL COMMENTS

Whenever tribal leaders come to Washington to seek appropriations for federal and tribal programs, we are constantly reminded of the millions of federal dollars spent on Indian programs. However, when we return to our reservation, we see very little evidence that the funds appropriated by the Congress have improved our reservation. Unemployment remains high and employment opportunities are scarce. The social ills associated with poverty are apparent across the reservation. Private enterprise, other than farming and ranching activities, is nearly non-existent. Federal contracts are simply not awarded to tribal members, and there is no mechanism available to assist interested tribal businessmen in pursuing federal contracting opportunities.

Private businesses have not developed within Indian communities for several reasons. Reservation infrastructure has never been financed in a meaningful way, except for the recent passage of the Intermodal Surface Transportation Efficiency Act.[1]

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[1] Pub. L. No. 102-240, § 1003(a)(6), 105 Stat. 1914, 1919 (1991). Though the Intermodal Surface Transportation Efficiency Act (ISTEA) was signed into law in December, 1991, and contains substantial increases in funding for the Reservation Roads Program, the Shoshone Tribe has yet to learn how the Bureau of Indian Affairs will implement that law and has yet to see any impact arising from that legislation. We view the increased funding as creating substantial contracting and employment opportunities as well as roads and bridges for the reservation. This Committee should investigate the Bureau's programming of ISTEA

Proper infrastructure plays a large role in a business's decision to locate on a reservation. There is also a substantial amount of confusion regarding the authority of state and local governments to tax business activity located within Indian reservations since the United Supreme Court's decision in Cotton Petroleum Corp. v. New Mexico. The relative tax burden of locating a business within a reservation compared to off-reservation directly affects the cost of goods and services provided by that business and therefore directly affects that business's competitiveness.

Finally, because a void of entrepreneurial activity exists within the reservation, our young people have little example to follow. Ideally, a successful businessperson is a highly motivated and disciplined individual who works well with other people and is known for integrity and honesty. There are a large number of people within the Wind River Indian Reservation that possess these basic characteristics, yet they have not been raised in an environment that would encourage business development in the uniquely difficult business climate on a reservation. We view the implementation of the Buy Indian Act as capable of creating the first generation of business role models for our young people to follow.

The amount of federal dollars expended within the reservation could be converted into contract opportunities for Indian people and form the seeds of long-lasting private enterprise. We expect to witness a corollary reduction in social welfare programs as business activity and employment increases. Although Indian preference in contracting and employment has been authorized since passage of the Buy Indian Act in 1910, there has been no real effort to implement a true Indian preference program. Federal dollars flowing to Indian reservations can be administered in a way that supports Indian business and Indian employment while accomplishing the underlying program objectives. We strongly urge this Committee to pass legislation that addresses these concerns.

COMMENTS ON SPECIFIC PROVISIONS

Section 2(b)(2) declares that a secondary but essential goal of this Act is to prevent and prohibit companies from misusing Indian preference programs. However, section 3(c) this draft bill endorses and makes mandatory a system of self-certification that has already proven defective. We understand that much of the blame for past abuse of the Indian preference program falls on the Bureau of Indian Affairs' failure to institute uniform contractor pre-certification procedures. This is one of the clear findings by the Senate Select Committee on Indian Affairs' Special Investigations Committee. The current self-certification system represents an

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funds and determine whether the Bureau is performing within the Congress's intent.

abdication of the Bureau's obligation to police the Indian preference program and places that onus on other Indian contractors. The proposed Office of Indian Business Development should carry the additional responsibility of pre-certifying all Indian preference eligible contractors. Past and current abuses within the Buy Indian program indicate that this program cannot continue with business as usual and self-certification must be eliminated and replaced with a responsible pre-certification program.

Section 3 (a) makes clear that each federal agency administering funds appropriated for the benefit of Indians must provide a preference to Indian preference enterprises. However, this section appears to establish two conflicting Indian preference procedures. The preference procedures described in the proposed Sections 23(a)(2) and (3) purport to require all federal agencies administering funds appropriated for the benefit of Indians to provide a preference to Indian offerors based upon a percentage of the evaluation factors or bid price. The preference procedures provided in Sections 3(a)(2) and (3) should be eliminated from this bill. The preference procedure provided in Sections 3(b)(9)(a) and (3)(b)(10) provide clear and reasonably unambiguous procedures that will ensure qualified Indian owned enterprises will be awarded contracts and that those businesses will make realistic efforts to employ Indian subcontractors and employees in performing those contracts.[2] All federal agencies should be required to follow one uniform Indian preference procedure and that Indian preference procedure should promote rather than discourage the growth of such businesses.

Section 3(a)(3)(A) sets forth three factors that bidders must satisfy to qualify for Indian preference. This provision requires an Indian preference enterprise offeror to swear by affidavit that:

> (A) the bidder's main office is located on an Indian reservation and at least 50 percent of the dollar value of the contracts of the

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[2] Section 23(a)(9) requires all federal agencies to implement Indian preference by limiting the competition for awarding a contract to Indian preference enterprises if there is a reasonable expectation that offers will be obtained from at least three architect-engineer firms, or two offerors in the case of a contract for the procurement of any other services or product, and the contract can be awarded at a fair and reasonable price. Under Section 23(a)(10), only if the federal agency finds that it is not feasible to limit the competition for the award to Indian preference enterprises can that agency provide a percentage based bid advantage to Indian preference enterprises under full and open competition.

> bidder for each of the previous 2 years has taken place within 300 miles of its main office;
>
> (B) no less than 70 percent of the subcontract dollars the bidder will award under the contract will be awarded to reservation-based, Indian-owned subcontractors; and
>
> (C) no fewer than 70 percent of the person hours that will be expended in carrying out the contract will be worked by Indians.

These conditions should be eliminated from the bill because they are simply impractical. Few if any businesses could meet these criteria and the result will mean the loss of Indian preference in contracting. We believe the contractors should be required to submit an Indian preference compliance plan based upon the use of available and qualified Indian subcontractors and employees. Unduly burdensome criteria will frustrate rather than promote the objectives of this legislation to make federal contracting opportunities available to Indian owned businesses.

The provisions of Section 3(a) (Section 23(a)(5)) set forth criteria that must be demonstrated in an Indian preference compliance plan prior to the award of any contract. We support the concept of requiring a binding Indian preference implementation plan, but feel that the such businesses should only be required to use workers that are available and technically qualified for the required work. Forcing Indian owned businesses to hire unqualified employees may help provide jobs to Indian people, but will impose harsh and unrealistic burdens on the management of the business. Language should be added to sub-paragraph (a)(5)(A) that qualifies the requirement to use Indian workers only where the Indian employees are available and technically qualified for the positions. We suggest that an additional provision be included that rewards employers for developing and instituting employee training programs. A bonus system that provides financial incentives, through a one-time grant, for the employment of each Indian trainee should be instituted. This approach more accurately addresses the need for Indian business owners to manage their businesses in a profitable manner.

The provisions of Section 3(a) (Section 23(a)(6)(b)) allow the Secretary of the Interior to authorize the use of Indian preference contracting procedures by federal agencies outside of the Department of the Interior using funds not appropriated for the benefit of Indians. Other federal agencies should have independent authority to use Indian preference procedures without first obtaining the permission of the Secretary of the Interior. We cannot imagine any situation where the Secretary would have procurement authority over other federal agencies and where such

agencies will attempt to give Indian preference when subject to burdensome procedures. The goal of this legislation should be to provide uniform procedures that each federal agency must follow. The role of the proposed Office of Indian Business Development should be to provide information to any federal agency about the identity and capability of each pre-certified Indian preference enterprise. However, each federal agency should be independently authorized and directed to implement those uniform procedures.

The provisions of Section 3(a) (Section 23(a)(8)(A) define when funds are deemed appropriated for the benefit of Indians and therefore subject to Indian preference procurement procedures. We would suggest that an additional subparagraph (iv) be added to state that all funds administered by the Bureau of Indian Affairs are for the benefit of Indians. This language would make clear that Indian owned businesses will be provided a preference to contract opportunities arising from funds administered by the BIA, regardless of the character or location of the site of the project.

The provisions of Section 3(a) (Section 23(a)(8)(C)) except certain funds from being classified as having been appropriated for the benefit of Indians. We disagree. Agencies should not be allowed to shield their contracts from Indian preference by placing them in the 8(a) program. The 8(a) program should be limited to contracts for programs that do not benefit Indians.

The provisions of Section 3(a) (Section 23(a)(10)(A)) are of concern because they permit a federal agency to use full and open competition when they find it is not "feasible" to limit competition to Indian owned enterprises. We suspect that federal agencies wishing to avoid the use of Indian preference procedures can become quite creative in making those procedures not feasible. Therefore, we suggest that the term "not feasible" be defined to include only situations involving responses to officially declared natural disasters, matters involving an imminent threat to national security, and other emergency situations.

Section 3(a) (Section 23(a)(13)(B)) requires the Secretary to set-aside certain contracts for Indian preference enterprises that are "small" as that term is defined in the Small Business Act. We support the creation of this set-aside authority and believe that it will provide an important opportunity for developing Indian owned businesses. However, we believe the dollar amount of contracts eligible for such set-asides should be increased. Construction contracts estimated to cost up to $2,000,000 and design contracts estimated to cost $200,000 should be authorized. The current costs of construction and design work are very high.

The definition of "Indian preference enterprise" at Section 3(a) (Section 23(b)(1)) refers to an enterprise that is certified

under subsection (c). A problem exists because there is only a self-certification procedure, which is actually no certification procedure at all. Again, we strongly urge the adoption of uniform pre-certification procedures and standards. Failure in this area will only further frustrate efforts to assist real Indian business development and discredit an otherwise worthy program.

We strongly support the creation of an Office of Indian Business Utilization within the Bureau of Indian Affairs. This entity should function as the certifying entity for Indian business enterprises and be staffed by professional business development personnel. The Office of Indian Business Utilization should maintain its principal office in Indian Country so Indian owned businesses have access to its services.

The Shoshone Tribe also supports the creation of an Indian Enterprise Bonding Demonstration Program to assist Indian enterprises in obtaining bonds from corporate surety companies. Under the Miller Act, all federal construction contracts over $25,000 in value must be covered by surety bonds which guarantee the bid price, payment of all laborers and suppliers, and performance of the contract as a prerequisite to obtaining a contract. Traditional surety underwriting standards preclude start-up businesses lacking substantial liquid assets and track records from obtaining bonds. Unfortunately, most Indian owned business fail to meet traditional surety company standards, even though they are otherwise qualified and capable of performing the contracts.[3]

We are concerned that the provisions of section 3(h) of the proposed legislation will cause conflicts with the BIA and tribes. Part of the services to be provided to Indian preference enterprises or surety companies includes clarification of issues

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[3] The Indian Enterprise Bonding Demonstration Program ("IEBDP") differs from and compliments the Bureau of Indian Affairs' supplemental surety bond guarantee provided in 25 U.S.C.A. § 1497a (West Supp. 1992). The supplemental surety bond guarantee is available only after the Indian contractor obtains or is likely to obtain a bond guarantee from the Small Business Administration. This guarantee alone was intended to induce standard bonding companies to bond Indian contractors. However, experience has shown that program by itself is not sufficient. The IEBDP authorizes contract administration in a manner that supports the Indian contractor's performance and more directly addresses the concerns of the surety industry. The IEBDP also authorizes the waiver of the Miller Act's bonding requirement for certain contracts and under certain conditions. If exercised, this waiver authority can greatly assist contractors to obtain contracts and establish the track record required to obtain conventional surety bonds.

of tribal sovereignty and the trust status of Indian property on Indian reservations. Both of these issues are highly sensitive and form the core of the federal trust responsibility to Indian tribes. The Bureau should not be directed or authorized to advise Indian owned companies or surety companies in a manner that would compromise its trust responsibilities to the tribes. The language contained in the proposed legislation is ambiguous and should either be deleted or clarified in great detail.

CONCLUSION

Indian preference in contracting and employment on federally funded projects can form the basis for revitalizing reservation economies. Despite the large investment of federal funds in Indian related programs, the economic benefits of those programs are not felt by Indian tribes or Indian individuals. The Shoshone Tribe supports the efforts of the Committee to address this problem and maximize the benefits that can be realized from federally funded programs. Thank you for the opportunity to present testimony on this important subject.

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